Primer of INDIAN ADMINISTRATION and the BRITISH CONSTITUTION

M. R. PALANDE

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BY

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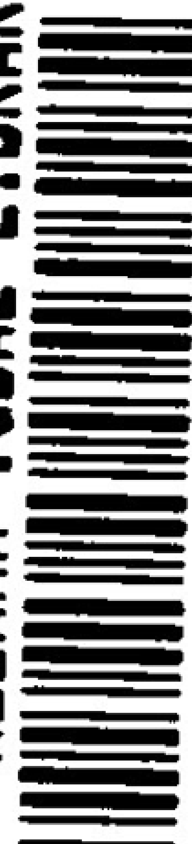
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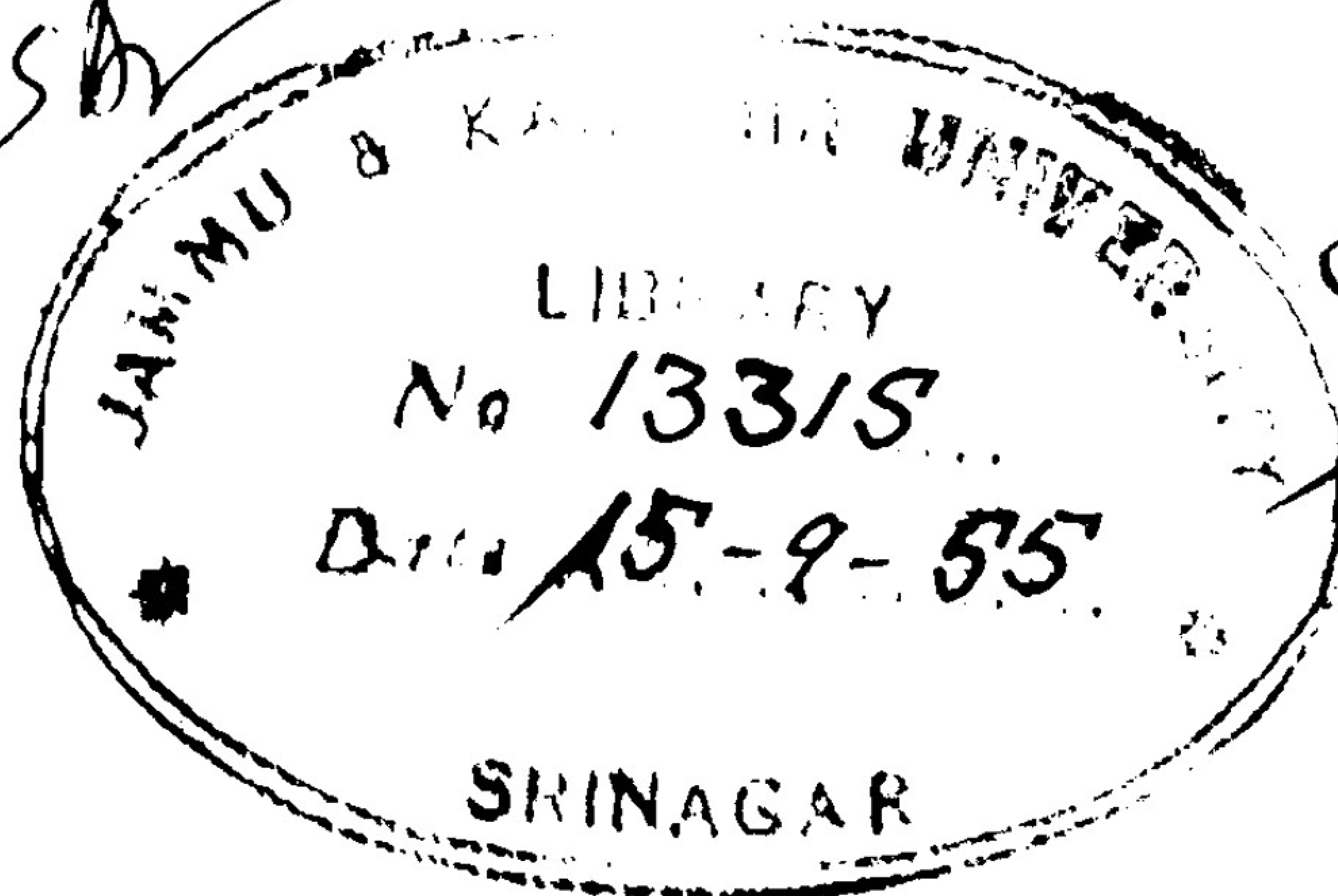
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INDIAN ADMINISTRATION

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INTRODUCTORY

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1. THE EAST INDIA COMPANY AND ITS CONQUEST OF INDIA

The East India Company. British administration in India began with the British conquest of India. The work of conquest was not finished at one stroke. It took nearly a century to complete. The Government or the people of England had not directly started on that venture. There was no motive or ambition of conquest in the beginning. Nor had elaborate plans been previously thought out for that object.

During the latter part of the sixteenth century English merchants began to feel that trade with India and other eastern countries was likely to prove highly profitable. Indeed, it meant great risks in those days. There were no steamships. There was no Suez Canal. The seas were not properly charted, and voyages were long and dangerous. The fury of the storms and attacks of pirates destroyed ships in large numbers. However, the hope of large profits compensated for the risks to a great extent.

An isolated individual could not easily undertake the expense and responsibility of opening up

trade with the East. Hence some English merchants met together and decided to form a company. Later on, the body came to be known as the East India Company. In 1600 Queen Elizabeth issued a royal charter and gave the Company certain privileges. The exclusive monopoly of trading in eastern waters was vested in the Company. Some restrictions were also imposed upon its actions.

Then the Company began its trade with India. The mighty Mogul Emperors were at that time ruling over the land. English merchants made efforts to secure special trading concessions from the imperial authority. Ambassadors like Sir Thomas Roe were specially sent to the capital for that purpose. The favours prayed for were often generously granted by the Emperors.

The Company established its depots and centres of activity in different parts of India. These were known as factories. The earliest was founded at Surat in 1612. Articles and commodities imported from abroad or purchased in India for export were stocked in the factories. They were also places of residence for the Company's English servants. Intimate business relationships were established between English merchants and Indian brokers and dealers.

After Aurangzeb's death in 1707 the Mogul Empire began to collapse. There arose confusion and a scramble for power. The Company got entangled in political and military conflicts. Wars were fought in the Karnatak. The battles of Plassey (1757) and Buxar (1764) followed. With them commenced the story of the British Empire in India. The Company now ceased to be a purely commercial corporation. It began to maintain armies and acquire

territory. Its trade gradually dwindled. Politics became the more important part of its activity.

When territory came to be conquered, the Company had to make arrangements for its governance. Some sort of administration had to be established. As circumstances had thus changed, Parliament thought it necessary to supervise the Company's affairs more closely. Special Acts were therefore passed from time to time. They laid down the form of administration which the Company was compelled to introduce in its Indian dominions.

2. Important Parliamentary Acts, 1773-1858

The Regulating Act. The first of these parliamentary measures was the famous Regulating Act. It was passed in 1773. It created the post of Governor-General and also an Executive Council to assist him. This is the beginning of the modern Government of India. Its controlling authority was established over all the territory of the East India Company. The Act also set up in Calcutta a Supreme Court of Judicature for the Presidency of Bengal. It consisted of English judges.

All these reforms were good in principle. Unfortunately, they proved to be vague and inadequate in certain respects. A good deal of confusion was caused when they were put into practice, but the defects were removed at a later stage.

Pitt's India Act. Parliament wanted to strengthen its control over Indian affairs still further. It desired to supervise the day-to-day working of the East India Company, in order to avoid or rectify the mistakes likely to be committed by that body. With this purpose, Pitt's India Act was passed in 1784.

It set up a Board of Control in England over the East India Company. The Board soon diminished into only one man, the President, who was a member of Parliament and also of the Cabinet. All important questions concerning the Government of India had to be submitted to him by the Indian authorities. His orders were final. He was the representative of Parliament and his prestige and authority were very great.

The Act of 1833. The trading monopoly of the East India Company was severely curtailed by the Act of 1813. Twenty years later, by the Act of 1833, the Company's trading activities were stopped altogether. It now became merely a political and administrative machine. The Act also appointed a Law Member to the Governor-General's Executive Council. Further, it tightened the grip of the Central Government on the provinces.

The Act of 1858. This Act finally abolished the East India Company. In the course of a century, practically the whole of India had come under its rule. It was a vast empire. Its administration involved a great responsibility. The East India Company had its origin only in commercial ambition. It had not been formed as an instrument for governing an extensive empire. The opinion began to gather force that the Company was not equal to its new task. The Indian Revolt of 1857 precipitated matters and brought about the Company's end. The Government of India was transferred to the Crown and Parliament of Britain. A Secretary of State for India was specially created. He was entrusted with the duty of superintendence, direction and control over the administration of India.

3. Growth of the Legislative Councils, 1861-1909.

Till the abolition of the East India Company the Indian citizen had no direct connexion with the Indian administrative machinery. His voice was not heard when laws were passed or taxes were imposed. He had no kind of influence over the actions of the executive. However, western education was gradually spreading in India. The educated Indian soon began to be conscious of his position. Parliament also thought it necessary that Indian opinion should be given some opportunity to express itself on the Government's policy. It therefore passed Acts to enable Indians to become members of the central and provincial legislative councils.

The Acts of 1861 and 1892. By the Act of 1861 a few non-official Indians were nominated to these legislative bodies, to explain the Indian point of view when laws were under discussion. Thirty years later, a further step was taken. By the Act of 1892, the principle of election was indirectly and cautiously accepted. The legislators were also permitted to put questions on administrative matters and to discuss the budget. All this however did not amount to much. The powers given to the people were very meagre.

In the meantime, the spread of education in India was producing its natural result. Political awakening began to be visible in many parts of the country. The Indian began to be dissatisfied with the existing administrative arrangement. He claimed a larger share in its conduct and direction. In fact, an organized effort was deemed necessary to press

Indian demands on the attention of Parliament, and hence the Indian National Congress was established in 1885. It soon became the premier political institution in the land. Its leaders began to conduct a vigorous agitation for securing larger political rights to the Indian people.

The Morley-Minto Reforms. Parliament was therefore required to make some further concessions to Indian opinion. With that object an Act was passed in 1909 introducing what are known as the Morley-Minto Reforms. The number of members of the legislative councils was increased. The principle of election was openly adopted. Resolutions were allowed to be moved to a limited extent. However, an official majority was maintained in the central legislature. Nor could the latter control the executive even to the smallest extent. The Indian therefore still remained profoundly discontented.

4. The Montford Reforms, 1919

The Great War. The Great World War began in August 1914. As a member of the British Empire India gave its whole-hearted co-operation to the Allies. Thousands of Indian soldiers actively took part in the struggle. Large contributions of men, materials and money were made by the Indian nation. It had been declared that the war was being fought for the liberties of the smaller nations; that the object of the Allies was to secure freedom for all. Under these circumstances, India's demand for self-government became more and more persistent. It was difficult to resist it.

The Announcement of 20 August 1917. The British Government therefore made an important

announcement in August 1917. It was now clearly stated that self-governing institutions would be gradually introduced in India, meaning that control over the Indian Government would be gradually transferred to the Indian people. Such a definite promise had never been made before. Hence the announcement is an important landmark in India's constitutional history.

The Montagu-Chelmsford Report. After the announcement the Secretary of State, Mr Montagu, paid a special visit to India. He and the Viceroy, Lord Chelmsford, held consultations with Indian leaders. Official opinion was also ascertained. Finally both of them came to certain conclusions in regard to the future of the Indian Government. These conclusions were embodied in a valuable report which they jointly wrote and submitted to Parliament. The immediate result was the Act of 1919, introducing what are known as the Montagu-Chelmsford Reforms.

The Act of 1919. This Act brought about several changes of great significance. (i) All administrative subjects were divided into two groups. One group was given to the Central Government and the other was given to the provinces. The spheres of the two authorities were clearly distinguished and separated from each other. (ii) The provincial subjects were divided into two parts. One part was to be managed as before by an irresponsible executive council. It was called the Reserved part. The other was to be managed by Ministers responsible to the provincial legislative councils. This was called the Transferred part. The legislatures of the provinces were enlarged in size and made more

representative and democratic. (iii) The central legislature was organized on new lines. It was divided into two chambers. The Council of State was the Upper House, and contained wealthy men and big landholders. The Legislative Assembly was more popular, and was directly elected on a slightly lower franchise. Both chambers were given larger powers than before. A part of the budget was allowed to be voted by the Legislative Assembly.

All these changes were intended to serve as the beginning of responsible government in India.

5. The Act of 1935 and After

The Simon Commission and the Round Table Conferences. The Montford[1] Reforms were considered unsatisfactory and inadequate by Indians, who continued to agitate for something better and more substantial. Parliament then appointed a Commission of inquiry under the presidency of Sir John Simon, which issued a comprehensive Report. Later on, three Round Table Conferences were held in London. They made certain recommendations about the form of government that should be established in India.

The Act of 1935. After all these proceedings and deliberations, Parliament took definite action. In September 1935, it passed a new Government of India Act. This Act introduced important changes in the Central and Provincial Governments in India. That part of the new Act which pertains to the provinces came into operation from 1 April 1937 and is functioning at present. The part which pertains to the Central Government was not however made

[1] For so the *Montagu-Chelmsford* Reforms are often called.

effective at the same time. Till it was introduced, the old system was intended to continue in all essentials.

Cripps' Declaration, 1942. Even the Act of 1935 had not satisfied India's aspirations. Many of its provisions, and particularly the federal scheme that it proposed, were severely criticised. It was felt that the Act fell far short of the goal of full freedom. In the meantime, the Second World War broke out in 1939. India made a substantial contribution to the war effort in every way. In this background the question of India's political status began to be discussed with even greater keenness and vigour. In March 1942 the British Government sent Sir Stafford Cripps to India with a draft Declaration of British policy towards India after the war. It was not however received favourably by the Indian public and agitation went on incessantly in the country.

Cabinet Mission's Proposals, 1946. The war came to an end in 1945 and a little earlier in the same year the Labour Party came into power in England with an overwhelming majority. It was announced that the policy of the Labour Government towards India would be 'to help her to obtain her freedom as speedily and fully as possible'. Indians themselves were called upon to frame a constitution for their country. In March 1946 a Cabinet Mission of three members headed by the Secretary of State was sent out to India. Its purpose was to discuss the Indian problem with India's leaders and to help in setting up in India a suitable constitution-making machinery. A sharp difference of opinion had arisen between the two major parties in the country. The Muslim League was insisting upon the creation of a separate sovereign

state — Pakistan — out of Indian territory, while the Congress was urging the preservation of the unity of India. They could not agree on this fundamental issue. The Mission therefore made their own proposals as a sort of compromise. They laid down certain basic principles on which the future constitution of India should be based and recommended that a Constituent Assembly should be set up in India at an early date for framing the Constitution. Details of the Mission's proposals are given in Chapter VII. The Constituent Assembly has already been formed and has held several sittings in New Delhi.

6. The Three Branches of Indian Administration

The Indian administration divides naturally into three principal branches. Each branch will have to be explained and understood separately.

One branch functions in England. It consists of the Secretary of State for India, his Advisers, and the India Office. They exercise control over the Governments in India in certain matters. The Secretary of State represents Parliament and therefore the British nation.

The other two branches function in India.

The Central Government operates for the whole country. It is in charge of subjects which are of importance to all parts of India. The Provincial Governments administer subjects which can be best managed with local knowledge and local resources. The spheres of the two Governments are distinctly separated from each other.

II

INDIAN ADMINISTRATION IN ENGLAND

1. The Secretary of State. 2. The Secretary of State's Advisers. 3. The High Commissioner for India. 4. Parliament and India.

1. THE SECRETARY OF STATE

His relations with Parliament. The Secretary of State is one of the principal ministers of His Majesty. The office was created in 1858 after the abolition of the East India Company. He must be a member of either the House of Lords or the House of Commons. He always gets a seat in the British Cabinet. Generally he is a prominent party leader. He comes into office with his party and goes out with it.

He is fully responsible to Parliament. He has to reply to all questions and supplementary questions which members of Parliament may put to him. If Parliament disapproves of his actions and policies he must resign office. He is entirely under the control of Parliament as are all other Cabinet ministers.

Formerly his salary was paid out of the revenues of India. Since the Act of 1919 it is paid out of British revenues, and Parliament has to vote it every year.

The Under-Secretaries. There are two assistants to help the Secretary of State. One is known as the Parliamentary Under-Secretary. He must be a member of Parliament. Usually, but not always, he sits in the House other than the one of which the Secretary of State is himself a member. He changes

with the party in power. The **Permanent Under-Secretary** is different. He is a bureaucratic servant. He must not be a member of Parliament. He is a non-party official having fixity of tenure. He is the head of the India Office establishment. His advice and experience are of immense advantage to the Secretary of State.

His relations with his Advisers. The Secretary of State is given the assistance of a body of Advisers, who do not, however, serve as an effective check on him. He is not bound to consult them on all matters, and even when he seeks and gets their advice, he is at liberty to set it aside. There is one important exception to this privilege. In matters which concern the superior Services in India, the opinion of the Advisers must be taken. It is binding upon the Secretary of State. Otherwise he has complete freedom of judgement and action.

His relations with the Governor-General. The Governor-General-in-Council of India is required by law to pay due obedience to all orders issued to him by the Secretary of State. The latter must be kept fully informed of all happenings in India. If there is any difference of opinion between the two authorities the Governor-General has either to yield or to resign. In law the Secretary of State is distinctly the superior and the Governor-General distinctly the subordinate.

However, in actual practice, the position is rather different. The Governor-General is the man on the spot. He realizes at first hand the difficulties of administration. A good deal of discretion and independence are therefore allowed to him. The Secretary of State's control is not exercised in day-

to-day routine. Constant interference in the details of Indian rule by a superior who stays six thousand miles away from India is not considered to be either fair or proper.

2. The Secretary of State's Advisers

Why they are created. The Secretary of State is not expected to have personal knowledge of India. He possesses no previous experience of Indian affairs. The Indian portfolio is given to him because it is convenient to his party to do so. But he is not an expert who has fully studied the Indian problem before he is appointed to his office.

Till recently, India had no rights of self-government. Quite a large number of questions were therefore required to be submitted to the Secretary of State for final disposal. He had the responsibility of passing orders on them, and his ignorance of Indian administration was a great handicap.

It was therefore thought necessary that he should be enabled to obtain proper advice, and the India Council was created for that purpose in 1858. It contained men who had long experience of India. Most of them were officials who had retired from high positions in the Indian bureaucracy.

When self-government was promised to India, the situation became different. There was then no need for many questions to go up to the Secretary of State. They could be finally disposed of by the Indian authorities. The need for the India Council therefore became less urgent than before.

Besides, Indian public opinion was keenly opposed to the composition of the Council. It was considered to be a reactionary body. Its total abolition was

often demanded.

The Act of 1935 abolished the India Council, but created a substitute to take its place. Full self-government was not being conferred upon India. The control of the Secretary of State was not expected to vanish altogether. Hence Parliament felt that he could not be left without some kind of advice and guidance. He was therefore provided with a body of Advisers.

Their constitution and functions. The Advisers are to be appointed by the Secretary of State. Their number is to be not less than three and not more than six. Till the introduction of the Federation, it will be not less than eight and not more than twelve.

At least one half of the Advisers must have held office in India for not less than ten years. In practice, they are very senior members of the Indian Services who have just retired from responsible posts.

The term of an Adviser is five years. He is not eligible for reappointment. Each Adviser gets a salary of £1350 a year. An Indian member gets £600 per year in addition as an allowance. Money for these salaries is provided by Parliament.

It is the duty of the Advisers to advise the Secretary of State whenever he desires to have their advice. He must consult them in all matters which affect the superior Services in India. The concurrence of a majority of the Advisers is necessary for every important decision in this respect.

With the exception of the subject of the Services, the Secretary of State is free to decide whether to consult with the Advisers or not on any question. He may consult with them collectively or with one

or more of them individually. He may or may not act in accordance with the advice given by them. The superiority and independence of the Secretary of State are thus clearly emphasized. There is not a great difference between the body of Advisers and the India Council which has now disappeared from the Indian constitution.

The India Office. The Secretary of State and his Advisers require a large office staff. Deputies, assistants, clerks, accountants, etc., have to be appointed to transact routine work. They are civil servants who are assured security of tenure. Their number is over 300. At their head stands the Permanent Under-Secretary of State. All this establishment is known as the India Office.

3. The High Commissioner for India

The Government of India requires a large number and variety of articles for different purposes. Railways, public works, the army and other departments require numerous kinds of stores and goods. Their total cost amounts to several crores of rupees every year. Many of them are not obtainable in India and have therefore to be purchased from abroad.

Till the Act of 1919 the Secretary of State and the India Council used to make these purchases for the Government of India. The Indian public, however, often complained that preference was shown to British goods even when their price was higher, which meant loss of money to India.

By the Act of 1919 the Secretary of State and the India Council were relieved of their agency functions. An official known as the High Commissioner for India was specially created. He was entrusted with

the work of making purchases of goods and stores required by the Government of India. He is expected to buy them in those markets where the required quality is available at the cheapest rates.

The Act of 1935 provides that the High Commissioner will be appointed by the Governor-General exercising his individual judgement. His salary and conditions of service are also to be prescribed by the same authority. He must perform his functions as the Governor-General directs.

4. Parliament and India

The supremacy of Parliament. The East India Company was a creation of the Crown and Parliament, and was entirely under their authority and control. In the earlier stages of its career, charters were issued to it from time to time. Later on, elaborate Acts were passed by Parliament to regulate its government in India. In 1784 a special body known as the Board of Control was brought into existence, which was empowered to superintend, direct and control the activities of the East India Company.

After the abolition of the Company, the Secretary of State for India was created. He is completely subordinate to Parliament and has to carry out all its mandates. Theoretically the power of the British Parliament is supposed to be absolutely unrestricted. It can decide what is good for the people of India. The Secretary of State is merely its instrument. Parliament's will is supreme and must prevail.

Limitations on its authority. However the promise of political rights to India makes a change in the situation. It means that the Indian legislatures

must have the final voice in purely Indian questions. If Indians are to be allowed to manage their own affairs freely, Parliament must cease to interfere with them. It must voluntarily accept certain limitations on its own powers. The logic of this position has been generally recognized.

The Act of 1935 has given autonomy to the Provinces. Their Governments are now entrusted to responsible Ministers, who are answerable to the legislature for their policies and actions. The legislatures, in their turn, are elected on a low franchise, and therefore represent the people to a great extent. There has been a considerable transfer of power from the British official to the Indian citizen. It is therefore agreed that the authority of Parliament over the provincial administrations should substantially diminish.

III

THE CENTRAL GOVERNMENT TODAY

1. The Executive: (i) The Governor-General and Crown Representative; (ii) The Central Executive Council. 2. The Central Legislature: (i) The Council of State; (ii) The Legislative Assembly; (iii) Conflicts between the two Chambers. 3. The Relation of the Executive to the Legislature.

The Act of 1935 proposed radical changes in the Constitution of the Central Government. They would have altered its unitary structure and turned it into a federation. However, those chapters of the Act were not made operative simultaneously with the introduction of provincial autonomy in 1937.

The central executive and the central legislature as prescribed by the Act of 1919 still continue to function. That portion of the Act of 1919 has been incorporated, with some necessary minor changes, in the Transitional Provisions of the Act of 1935. The following pages describe the existing position.

1. The Executive

(i) The Governor-General and Crown Representative

Appointment.—The office of Governor-General was first created by the Regulating Act of 1774. He is the head of the Indian Government. He is appointed by His Majesty on the advice of the Prime Minister. He is generally a member of the British aristocracy. Usually he also happens to have acquired some political or administrative experience. His office is

essentially a non-party office. The Governor-General does not change with a change of the ministry in England. His tenure of office has been fixed by custom at five years.

His relations with the Executive Council.—The Governor-General presides over the Executive Council and distributes work among its members. He makes rules and regulations for conducting the meetings of this body. He has a casting vote in case of a tie. In the selection of persons to be members of the Council, the Governor-General's opinion and influence count for a great deal.

Ordinarily the decision of the majority prevails, and it must be accepted by the Governor-General and all members. However, on extraordinary occasions the Governor-General can override his Executive Council. If he feels that their judgement is wrong and harmful he can exercise his power and set it aside. Of course in practice this exceptional power is very rarely used.

His relations with the Legislature.—Till the introduction of the Montagu-Chelmsford Reforms the Governor-General was the President of the Legislative Council. Since then, he has ceased to have that privilege. Still he has the right of addressing both the legislative chambers. He summons them, prorogues them, and dissolves them. He can extend their tenure under special circumstances. He appoints a date and place to hold fresh elections, also a date and place for holding the sessions of either chamber. His assent is required for all Bills passed by the legislature. Non-official resolutions and Bills cannot be admitted for discussion unless his previous permission has been obtained. He can stop the proceedings

in either chamber in the interests of public peace and safety.

Certification.—He is also given an extraordinary power to override the legislature. It is known as certification. If either or both chambers fail to pass a Bill or a clause of a Bill in the form in which Government desires it should be passed, this method can be employed. The Governor-General certifies that the Bill or the clause of the Bill is absolutely essential in the interest of good government. Thereupon by his mere signature such Bills can become full-fledged Acts binding on all.

This is a very serious encroachment on the privileges of the legislature. It is attempted to be justified on the ground that India is passing through a period of transition. Such an extraordinary course may be inevitable if self-government is not fully developed.

Ordinances.—The Governor-General has been given the power of issuing what are called Ordinances. An Ordinance is a kind of law but it is not passed by the legislature. It emerges from the head of the administration in his executive capacity. It has the force of law for six months after it is issued and can be further renewed for similar terms of six months. This power is intended to be used in emergencies.

His powers as Viceroy and Crown Representative.—The Governor-General is also the representative of the British Sovereign. Therefore he enjoys all the dignity and prestige which the Sovereign himself would enjoy if he chose to stay in India. He has the prerogative of mercy and pardon. He receives homage from the Indian Princes. He symbolizes the unlimited sovereignty of the Crown. The gran-

deur of royalty attaches to him as his master's deputy. In his capacity as Crown Representative, he deals with the Indian States and their Rulers.

Conclusion.—Taking all factors into account, the influence of the Governor-General on Indian administration is bound to be immense. His rank and social status are high. He has got large powers, ordinary and extraordinary, in executive and legislative matters. The dignity of being the direct representative of the Sovereign is enjoyed by him. There is a large and lucrative patronage in his possession. If he is assertive by temperament his views are bound to dominate. His individuality can be impressed on the whole administrative field.

(ii) The Central Executive Council

Constitution.—The Governor-General's Executive Council was first formed by the Regulating Act. After the Montford Reforms and till October 1941 it consisted of eight members including the Governor-General and the Commander-in-Chief, though no particular number is fixed by statute. All the members are appointed by His Majesty. Three of them were required to have served in India for at least ten years, but this restriction was abolished by an Act of Parliament in 1946. One must be either a barrister of England or an advocate of Scotland or a pleader of an Indian High Court of not less than ten years' standing. The number of Indian members was increased to three in 1921.

Expansion of the Council, 1941.—An important development in the constitution of the Council took place during the war. The federal scheme, as envisaged by the Act of 1935, had been finally suspended,

but an attempt was then made to Indianize the Central Government to a great extent. Accordingly, in October 1941 the total number of members of the Council was raised to twelve, excluding the Viceroy. It was further increased to fifteen in July 1942. Another member was added in 1944. Of these, ten were Indians and non-officials, four were European officials and one was a non-official European. They were of course not responsible to and removable by the legislature. But, for the first time in the history of British administration in India, an Indian majority was provided in the Viceroy's Council.

Interim Government, 1946.—An epoch-making change took place in regard to the Executive Council in recent months. From 1939 popular ministries, formed in accordance with the Act of 1935, ceased to function in most of the provinces, and their place was taken by the bureaucratic regime of Advisers. However, they returned to office in 1946. No structural changes had been introduced in the Central Government even after the Act of 1935. The framing of a new constitution was entrusted to the Constituent Assembly but it was bound to take some considerable time. The Cabinet Mission had therefore recommended that within the framework of the existing constitution a popular government should be established at the centre for the interim period. After prolonged negotiations and discussions the Indian National Congress agreed to join such a government, and its leaders, headed by Pandit Jawaharlal Nehru, were appointed members of the Council. The Interim Government began to function from 2 September 1946. The Muslim League joined the Government six weeks later.

The unique feature of this arrangement is that though the old constitutional forms have not been altered, the Council is intended to have the status and powers of a responsible cabinet. All the portfolios, including defence, external affairs and finance, are entrusted into the hands of Indians and all the members are Indians. Pandit Nehru is appointed Vice-President of the Council and that office will, by convention, approximate more or less to the office of Prime Minister. Members are expected to hold themselves fully responsible to the legislature and also work on the principle of collective responsibility. This will be possible if the Congress and League parties co-operate with each other. Thus, in practice if not in law, it will be an attempt at parliamentary government and is therefore a new era in our constitutional history.

Powers and functions.—Till the Act of 1935, the powers of superintendence, direction and control over the civil and military government in India were vested in the Governor-General-in-Council. Now the circumstances have changed. The provinces have already become autonomous units. The authority of the Central Government is now confined, more or less, to the central sphere. It has to administer those subjects that are specifically assigned to its charge, and its old powers of general supervision over the whole field of Indian governance have practically disappeared, except in times of a grave emergency like war.

Method of working.—Originally the Council worked collectively in all matters. There was no system of distribution of work among members. Every question was disposed of by the Council sitting as a

whole. In 1861 Lord Canning introduced the portfolio system. It still obtains today.

Portfolios.—Under this system all departments are divided into different groups and to each member is assigned one such group or portfolio. Ordinary departmental matters in each group are disposed of by the member in charge on his own authority. Subjects of greater importance are referred to the Viceroy and to the Council. Usually meetings are held every week. If a difference of opinion arises on any question, votes are taken and the view of the majority ordinarily prevails. It has to be accepted by all.

Besides the Viceroy who is the President and who as Crown Representative deals with Indian States the following is the present distribution of the portfolios: (1) External Affairs (2) Defence (3) Finance (4) Home (5) Communications (Post and Air) (6) Transport and Railways (7) Legislative (8) Industries and Supplies (9) Works, Mines and Power (10) Education and Arts (11) Health (12) Food and Agriculture (13) Commerce (14) Labour.

Till the expansion of the Council in October 1941, most of its members were bureaucratic officials who had spent many years in service. This was quite unlike the British Cabinet all members of which are non-officials, and essentially politicians. The Executive Council was considered to be a valuable guide to the Viceroy who comes as a stranger to the country. With the increase in non-official members things materially changed.

The Secretaries.—Immediately below the executive councillors there are officers known as Secretaries. A secretary is in charge of the departmental office.

Till the formation of the Interim Government in September 1946 his position was peculiar. He was allowed to be present at meetings of the Executive Council to furnish information though he was not a member of that body. He was also required to be constantly in attendance on the Viceroy to discuss with him all subjects of importance arising in his department. He had the right of bringing to the Viceroy's notice any matter of special significance. Thus though he was a subordinate of the member of the Executive Council, he had the special privilege of having direct access to the Viceroy, who was the superior of his immediate superior. Secretaries have now ceased to have this privilege.

The Secretariat.—The Viceroy and every member of the Executive Council have an office of their own in the capital of the country. All these offices are situated in a big centralized building. The member in charge of a portfolio is the head of his office and below him are the Secretary and the Deputy Secretary, who are generally men belonging to the superior Services or the I. C. S. Below them are the Assistant Secretary and a large staff of superintendents, typists, clerks, etc. These offices and their establishments are collectively known as the Secretariat of the Central Government. Executive orders and directions issued by the Government of India to their officers emanate from the Secretariat. It is also the store-house of all information concerning the various departments of Government.

2. The Central Legislature

The power of making laws was conferred upon the Governor-General-in-Council by the Regulating

Act of 1774. As years passed on, that power developed. The size of the Legislative Councils was increased. Gradually non-official and elected members were introduced in them. Their powers and functions were also increased. The Acts of 1861, 1892, 1909 and 1919 brought about these changes.

At present there are two legislative chambers in the Central Government. One is known as the Council of State. The other is known as the Legislative Assembly.

(i) The Council of State

The Council of State corresponds to the Upper Chamber in other countries. Is is mainly intended to represent the stable element in the community. Its membership is constituted, to a great extent, by aristocrats, big landowners, wealthy merchant princes and industrial magnates.

Constitution and franchise.—The total number of its members is 60: of these 33 are elected and 27 are nominated. Of the latter, not more than 20 are to be officials.

The Council of State is an all-India legislature and must therefore contain members from all provinces. To each province is assigned a certain number of its members, both in the elected and nominated groups. Of the nominated members one official and one non-official member are selected to represent the province of Bombay. Of the elected members, six are returned by constituencies formed for that purpose in the Bombay Province.

The franchise for election to the Council of State is not uniform throughout India. Conditions of life are not the same everywhere. Qualifications are

therefore differently enumerated for each province.

In the Bombay Province the following persons have been given the right to vote: (1) persons who pay income-tax on an income of not less than Rs. 30,000 a year, (2) landowners who pay land revenue of not less than Rs. 2,000 per year, (3) persons who are recognized as Sardars, Inamdars, Talukdars, etc., by Government, (4) persons who have once been presidents or vice-presidents of (*a*) a municipality or (*b*) a district local board, (5) persons who have once been members of the senate of a university, (6) persons who have once been members of a legislature in India, (7) persons who have the title of Mahamahopadhyaya or Shams-ul-Ulema.

The President of the Council of State is nominated by the Governor-General. The tenure of the Council is for five years. But it can be extended by the Governor-General who can also dissolve it earlier.

Powers and functions. — The assent of the Council of State is required for all laws to be placed upon the statute book in India. No Bill which is not assented to by it can be taken to have finally passed. Its vote must be taken on every piece of legislation contemplated by the Central Government.

The Council can exercise some control over the administration. It can do so by putting questions and supplementary questions, by moving resolutions, and by initiating motions of adjournment.

The budget is presented to the Council of State, which can proceed to discuss it. However, the power of voting grants for expenditure is not conferred on this body. It is the exclusive privilege of the Legislative Assembly, which is the more democratic of the two chambers.

All proposals for taxation are placed together in one Bill known as the Finance Bill. This Bill goes to the Council of State for its sanction after it has been passed by the Assembly. It cannot become an Act unless the Council's sanction is given. Hence in matters of taxation the Council is not entirely powerless.

On the whole, the Council of State is an oligarchical body. The majority of its members are drawn from the richest classes. Its outlook naturally is very conservative. Quite often its views are opposed to those of the Legislative Assembly, which is a more popular chamber.

(ii) The Legislative Assembly

Constitution and franchise.—The Legislative Assembly corresponds to what is described as the Lower Chamber in western countries. It is intended to be representative of a wider public opinion. Its membership is not confined to only the richest classes as is the case with the Council of State.

The Assembly consists of a total number of 144 members, of whom 103 are elected and 41 are nominated. Of the latter, not more than 25 are officials.

The Assembly, like the Council, is an all-India chamber. The total number of its members is distributed among the various provinces. Provinces which are large in size and population naturally have been given larger representation than others.

Of the nominated members, two officials and one non-official are selected from the province of Bombay. Of the elected members sixteen are returned by constituencies formed for that purpose in the Bombay Province and Sind.

The franchise for the Assembly varies from province to province. This is inevitable because conditions are so different in different parts of India.

In the Bombay Province the following persons get the right to vote at elections to the Assembly: (1) persons who pay income-tax, (2) persons who pay land revenue of not less than Rs. 75 per year (in Upper Sind Frontier, Panch Mahals and Ratnagiri Districts, not less than Rs. 37-8-0).

This franchise is much lower than that for the Council of State. However, it cannot be described as sufficiently democratic.

The President of the Assembly is elected by itself from among its own members. The President has to uphold the dignity of the House, and to safeguard its rights and privileges. He maintains order at its meetings. Questions are admitted with his permission. He can also allow motions of adjournment to be moved. His salary and that of his Deputy are voted by the Assembly.

The Assembly has a tenure of three years. But it can be extended by the Governor-General who can also dissolve it earlier.

Powers and functions.—No Bill can become an Act unless it is passed by the Legislative Assembly. The assent of both the Assembly and the Council of State is necessary for all laws which it is intended to place upon the statute book.

Members of the Assembly can also exercise control over administration by the usual methods. Questions and supplementary questions can be put by them. Resolutions and motions of adjournment can be moved by them. The Assembly's public criticism

of the actions of Government is likely to prove a very healthy corrective.

The Budget.—The Budget of the Government of India is divided into two parts. One consists of what are described as votable items. Expenditure on these items has to be voted by the Assembly. The remaining subjects are described as non-votable. Expenditure on them is incurred with the sanction of the Governor-General-in-Council. Here the Assembly's vote is not required.

The whole budget is presented to the Assembly by the Finance Member. After a few days, a general discussion is held on it. Thereafter demands for grants are made by heads of different departments. They refer only to items in the votable list. The Assembly may reduce or reject a grant. It cannot increase it.

A grant reduced or rejected may be certified by the Governor-General as being essential. In that case it can be fully restored by his signature in spite of the Assembly's adverse vote.

All proposals of taxation are embodied in a Finance Bill. This Bill must originate in the Assembly. Like all other Bills passed by the Assembly this Bill must be sent to the Council of State for its approval. It can become law only when the Council of State has passed it according to the usual procedure.

Standing Finance Committee and the Committee on Public Accounts.—The Assembly has been given the power of appointing these Committees. Rules have been provided for that purpose. The Finance Committee scrutinizes all proposals for new votable expenditure and generally advises the Finance

Department on matters referred to it. The Committee on Public Accounts examines the accounts of the Central Government. It has to satisfy itself that the money voted by the Assembly is spent exactly for the purpose for which it was voted.

Legislative procedure.— A Bill must pass through three readings in a legislative chamber before it can become law. The first reading is very formal and takes a short time. Permission is sought to introduce the Bill and it is rarely refused. In the second reading the Bill is generally referred to a small Select Committee of the House. This Committee thrashes out all the clauses and makes suggestions to amend or to alter them. Then the Bill is taken up for discussion clause by clause. Amendments may be moved by any member, and with or without them the clauses may be passed. Then follows the third reading of the Bill. Only verbal changes are allowed at this stage.

After one chamber has discussed a Bill and passed it in three readings it goes to the other chamber. There also it has to pass through three readings. Then it is sent to the Governor-General for his assent. A Bill cannot become law unless and until the Governor-General's assent is given.

(iii) Conflicts between the two chambers

As stated in the last section, every Bill before it can become law must be passed in identical form by both the Assembly and the Council of State. This may not happen. One of the chambers may pass a measure. The other chamber may not agree to it or to a part of it. Thus there may arise a conflict of opinion. But remedies are provided to end such

disputes. Otherwise legislative business might come to a standstill.

When a Bill is being read for the second time in either chamber a **Joint Select Committee** may be appointed to discuss it in detail. Members of this Committee may be appointed from both the chambers; so that the other chamber is prepared to receive the Bill. Its opposition, if any, has been anticipated.

After a Bill is passed by one chamber it may prove unacceptable to the other. It is recommended that a **Joint Conference**, in which an equal number of representatives from both the chambers would participate, be held to compose the differences that have arisen.

Lastly, the Governor-General may order a **Joint Sitting** of both the Houses. All questions in dispute are to be referred to and discussed in these joint meetings. Ultimately votes are to be taken and the decision of the majority becomes binding on all.

Sometimes the Government itself may be interested in getting a particular Bill passed. One of the chambers may have sanctioned it. The other may have refused its sanction. Thus arises a conflict. However, in this case the Governor-General may use his power of certification. Then the Bill, even if it is rejected by one chamber, is restored and becomes law. Conflict between the two chambers is automatically terminated.

3. The Relation of the Executive to the Legislature

In a self-governing country the legislature is very important. It passes laws. But what is more, it represents the people and reflects their opinion. It

creates administration and controls it. It votes taxes and moneys and lays down the way in which they should be spent. Ministers and other officers have to carry out its will. If the legislature has no confidence in them they are dismissed. This is described as the principle of political responsibility. According to this principle the legislature is supreme and the executive subordinate to it.

By the Act of 1919 the final goal of British policy in India was proclaimed to be the development of Responsible Government. This means that ultimately, whenever it may be, the Indian executive will be made completely subordinate to the Indian legislature. Ministers will then hold office only as long as they are able to carry the legislature with them.

However, the Act itself did not introduce the principle of responsibility in the Central Government. The Government of India still continued to be responsible only to the British Parliament. Even after its expansion and considerable Indianization in 1941 and 1942, the Executive Council was not removable by the Indian legislature. Its salary was not voted by that body. Legally speaking, it was answerable only to the Viceroy and the Secretary of State. Through them it was controlled by the British Parliament.

But, in practice, the Indian legislature necessarily exercised at least some influence over the executive. After 1919 the legislature was greatly enlarged and made more democratic. Ordinarily, it could claim to represent popular opinion to a certain extent. It was given the power of putting questions and supplementary questions. It could move adjournments. It could pass resolutions. The votable part of the

budget had to be sanctioned by it. Its scrutiny and criticism gave publicity to the acts of the Government.

Indirectly this might have had some influence on the attitude of the Government. The Government was not bound to bow to the legislature's will. Still it might try to accept some of its opinions. Views expressed by a large number of elected members were bound to receive a certain amount of sympathetic consideration. The Government's actions could then be modified so as to be in line with popular sentiments. This idea is expressed in the statement that the Government became, after the Montford Reforms, responsive if not responsible to the will of the people as represented in the legislature. This could be supposed to be particularly true, when non-official Indians formed a majority of the Viceroy's Executive Council since 1941.

After the formation of the Interim Government, the situation can be said to have palpably changed. Strictly legally speaking, the executive even now is not responsible to and removable by the legislature. But the popular ministers are expected to adopt a self-imposed rule that they will be completely subordinate to the legislature and abide by its decisions and will.

IV

THE FEDERATION OF INDIA

1. Why is a Federation necessary? 2. Establishment of the Federation. 3. Distribution of Subjects. 4. The Federal Executive: (i) Introduction of Dyarchy; (ii) The Governor-General; (iii) The Counsellors; (iv) The Council of Ministers. 5. The Federal Legislature.

1. Why is a Federation Necessary?

India is a very large country. Its area is counted to be about eighteen lakhs of square miles. Its population is now about forty crores. Such an immense territory cannot be properly governed from a single centre by a single authority. There ought to be a division of power on some rational basis.

Further, it must be remembered that the Indian people are split up by many differences in race, language, religion and historical tradition. Every linguistic and religious unit is eager to preserve its identity and independence. Yet, in spite of these differences, India is also unified by a sense of common nationhood. Its citizens in all parts of the country feel that they are children of the same motherland. To them the larger life of the nation as a whole is as important as the interests of the smaller units.

The federal form of government is very convenient to meet the needs of such a dual situation. It distinguishes between subjects that ought to be common and those that ought to be left to the provinces. The former are handed over to a strong central authority. The latter are entrusted to the people of the province.

One cannot encroach upon the other. The two spheres are clearly marked out and assigned.

2. Establishment of the Federation

The Indian Government has been unitary till now. By the Act of 1935 it was proposed to turn it into a federation. British Indian provinces and the Indian States were intended to be combined into one unit in the new polity. However, as has been already stated, the federal project was not actually introduced, and in the light of subsequent events it has been completely discarded. The following is a brief outline of the scheme. It has now only an academic interest.

Under the Act of 1935, the British Indian provinces would have been automatically incorporated in the federation as soon as it came into existence. That was not the case with the States. The status and internal freedom of the latter are regulated and guaranteed by the treaties which have been made with them. They could not therefore be compelled to join the federation by an Act of the British Parliament. It must be left to their choice to do so or not. Those Rulers who decided to join the federation were to sign a paper called the Instrument of Accession which must be approved by His Majesty. This paper was to specify the conditions which the Ruler has accepted in participating in the federal scheme.

3. Distribution of Subjects

In a federation, certain subjects which are of common interest and importance to the whole country are managed by the Central Government. In other

subjects the authority of the provinces prevails. The two groups must be clearly defined and distinguished from each other in order to avoid confusion and conflict. The Act of 1935 had done so by enumerating three separate legislative lists. One of them was assigned to the centre, the other to the provinces; the third which is called concurrent, includes subjects in which action may be taken by both the governments in certain circumstances.

Details about these lists are given in Chapter V.

4. The Federal Executive

(i) Introduction of Dyarchy

The principle of responsibility was proposed to be partially introduced in the Central Government. For that purpose the federal subjects were to be divided into two groups, one of which may be called Reserved and the other Transferred, though the words have not actually been used in the Act. The Reserved subjects were to be administered by the Governor-General with the assistance of Counsellors who would be responsible to him. The Transferred subjects were to be administered by him with the assistance of Ministers who would be responsible to and removable by the federal legislature. Defence, External Affairs, Ecclesiastical Affairs and Tribal Areas were to be Reserved subjects. The remaining federal subjects were to be transferred.

(ii) The Governor-General

The Governor-General was, as now, to be appointed by His Majesty on the advice of the Prime

Minister of Britain. The Act of 1935 provided that the office of Crown Representative should be distinct from the Governor-General's office, and they have been now separated. Both offices however were, in practice, to be held by the same man. The tenure of the office was to be five years.

The Governor-General was to exercise his power in three ways; they would apply to any subject, whether Reserved or Transferred, of the Central Government:—(i) sometimes he might act in his discretion; on such occasions he might not consult Ministers at all; (ii) sometimes he might act in his individual judgement; on such occasions he was expected to consult the Ministers but might not accept their opinion and might not act according to their advice; (iii) on all other occasions he had normally to act on the advice of Ministers, even if he did not agree with them.

The power of appointing Counsellors for the administration of the Reserved subjects was vested in the Governor-General. He could also appoint a Financial Adviser. These officers were to be subordinate to him. Technically speaking, the power of appointing Ministers also vested in the Governor-General. But as they must enjoy the confidence of the legislature, his power might in practice be greatly limited. He had, however, the right to preside over their meetings and to make rules for the transaction of business.

The Governor-General could summon, prorogue and dissolve the Federal Legislative Assembly. He could make rules of procedure for regulating the business before either house. His previous sanction was required for the introduction of many important

kinds of Bills, and his assent was required for all Bills after they were passed by the federal legislature. He could issue ordinances, and could also pass what were to be known as the Governor-General's Acts entirely on his own authority without any reference to the legislature, if in exceptional cases he thought it necessary to do so.

He was to control the actions of the provincial governors when they act in their discretion or in their individual judgement. He could also issue orders to a provincial governor about taking steps which may be found necessary for keeping the peace and tranquillity of India.

Over and above these powers, the Governor-General was invested with the following Special Responsibilities:— (*a*) prevention of any grave menace to the peace and tranquillity of India, (*b*) safeguarding the financial stability and credit of the federation, (*c*) and (*d*) safeguarding the legitimate interests of the minorities, and the rights and interests of the Services, (*e*) preventing discrimination against the United Kingdom in any way, (*f*) preventing discrimination against British or Burmese goods, (*g*) protecting the rights of Indian States and their Rulers, (*h*) securing the due discharge of those functions which have to be exercised in his discretion or in his individual judgement.

These Special Responsibilities had to be exercised in his individual judgement and they cover the whole domain of the administration.

In grave emergencies, the Governor-General could suspend the constitution and assume to himself all powers of government. A proclamation to that effect was to be issued on such occasions.

(iii) The Counsellors

The number of these officials was to be not more than three and they were to be appointed by the Governor-General in his discretion. Their salaries and conditions of service were to be prescribed by His Majesty. Probably, the portfolios of the Reserved departments were to be distributed among them, and the Governor-General might consult them individually or jointly. But their opinions were not to be binding upon him. The Counsellors were not to be under the control of the federal legislature. They could not be removed from office even by a vote of censure, nor was their salary a votable item in the Budget.

The Governor-General might appoint a Financial Adviser who was to be answerable only to him, and prescribe the conditions of his service. This officer should not be confounded with the Finance Minister who was to be responsible to the legislature.

(iv) The Council of Ministers

For the administration of the Transferred subjects, there was to be a Council of Ministers. Their number was to be not more than ten. They were to be chosen and summoned by the Governor-General, but he could select only such persons as were able to command a majority of votes in the central legislative chambers. In other words, they must have popular support behind them. The salaries of Ministers were to be fixed by an Act of the legislature, which was to have also the power of removing them by passing motions of no-confidence. They were to work on the principle of collective responsibility and

have a leader who might be known as the Prime Minister.

Thus, irresponsible Counsellors and responsible Ministers were to be working together in the same government, with a budget and the legislature that were common to both. This is known as Dyarchy, that is government divided into two parts with differing constitutional status.

5. The Federal Legislature

The federal legislature was to be composed of two chambers as at present. The Council of State was to consist of not more than 260 members. Of these 156 were to be from British India and not more than 104 from the Indian States. The Federal Assembly was to have a total strength of not more than 375 members. Of these 250 were to be from British India and not more than 125 from the Indian States.

The Council of State was to be a permanent body. It was not to be subject to dissolution. The term of its individual members was to be nine years. One-third of their number was to retire every three years. The Assembly was to have a tenure of five years. It might be dissolved earlier by the Governor-General.

Elections to the Council of State were to be direct. Special constituencies were to be formed for that purpose all over British India. A high property qualification was to be prescribed to get the right of vote at its election. Elections to the Assembly were to be indirect. Its electors were to be the members of the provincial legislative assemblies.

Every law was to require the assent of both the chambers. Both were to be able to exercise control over

the administration by moving resolutions, adjournments and votes of no-confidence, and by putting questions. The budget was to be presented to both of them. It was to show separately the votable and the non-votable items. Demands for grants in respect of votable items were to be presented not only to the Legislative Assembly as at present, but also to the Council of State. Thus the powers of the two chambers were to be equal and co-ordinate in almost all respects.

Representatives of Indian States were to be nominated by their Rulers.

The Governor-General was to be given the power of promulgating what were to be known as the Governor-General's Acts. They could be issued when the legislature refused to pass laws which were considered necessary by him. This was a more direct method than the existing process of certification, the place of which it was intended to take. The Governor-General was to have also the power of issuing ordinances.

The following table shows the distribution of British Indian seats in the federal legislature by provinces:

BRITISH INDIAN SEATS IN THE FEDERAL LEGISLATURE

Province or community	Total seats in the Council of State	Total seats in the Federal Assembly
Madras	20	37
Bombay	16	30
Bengal	20	37
United Provinces ...	20	37
Punjab	16	30
Bihar	16	30
Central Provinces and Berar.	8	15
Assam	5	10
North-West Frontier Province	5	5
Orissa	5	5
Sind	5	5
British Baluchistan ...	1	1
Delhi	1	2
Ajmer-Merwara ...	1	1
Coorg	1	1
Anglo-Indians	1	
Europeans	7	
Indian Christians ...	2	
Non-provincial seats chosen by the Governor-General in his discretion ...	6	4
Total ...	156	250

V

THE PROVINCIAL GOVERNMENTS

1. The Provinces and their Relations to the Central Government. 2. The Provincial Executive: (i) The Governor; (ii) The Council of Ministers. 3. The Provincial Legislature. 4. Relation of the Executive to the Legislature.

1. THE PROVINCES AND THEIR RELATIONS TO THE CENTRAL GOVERNMENT

Names of the provinces. India is a very large country. Its administration cannot be wholly concentrated in the same authority. Therefore, it has been divided into several territorial units called provinces.

Eleven such provinces, called Governor's provinces, now exist in India — Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the North-West Frontier Province, Orissa, and Sind. Of these, Orissa and Sind were newly created by the Act of 1935. Burma which was formerly a part of India was separated.

The form of government in all the Governor's provinces is the same. There are differences only in details. Their administrative systems are also similar to each other to a great extent.

Delhi, British Baluchistan, Ajmer-Merwara, Coorg, the Andaman and Nicobar Islands and the area of Panth Piplod in Central India are called Chief Commissioner's provinces. They are small units and are administered by Chief Commissioners

appointed by and responsible to the Governor-General.

The central and provincial subjects. The government of a big country presents two different problems. There are certain subjects which are of importance to the whole land. They require unity of policy and control. Their administration has to be entrusted to one single authority. There are other matters where diversity of action may be permissible and even desirable. Their importance to the public is not less, but they can be best managed with local knowledge, local resources and local authority.

The first kind of subjects is placed in charge of the Central Government. The operations of that body concern the whole country, and it must be representative of the whole area and population comprised within the country.

The second kind of subjects is given to the Provincial Governments. The jurisdiction of these bodies is confined to the specific geographical areas which make the provinces, and they are constituted so as to represent the people of the province.

A third category of subjects may also be defined. Here, both the Central and the Provincial Governments may have an opportunity to act. The former may prescribe general principles and policies. Consistently with them, the latter may determine the actual practice.

The following are some of the important central subjects as defined by the Act of 1935: army, navy, and air forces; external affairs; currency and coinage; posts, telegraphs, telephones, broadcasting; census; federal railways; insurance; banking; customs; salt; income-tax.

The following are some of the important provincial subjects: justice; police; prisons; local self-government; public health; education; irrigation and canals; agriculture; forests; excise; land revenue; co-operation.

The following are some of the subjects in which both the Central and Provincial Governments will have authority: criminal law and procedure; civil procedure; marriage and divorce; registration; trade unions and labour disputes; electricity.

Control of the Central Government over the provinces. Till the Act of 1935, the provinces had no independent status. They were regarded merely as the creations of the Government of India. They did, indeed, enjoy some power and manage some departments, but all these powers and privileges were merely the gifts of the Central Government. The latter could increase, vary, or even reduce them at will. There was no right which was inherently possessed by a province.

The Act of 1935 proposed to make India a federal country. A federation is composed of autonomous units, which are given full liberty to look after their own affairs. Therefore, the Indian provinces have now acquired a new status. Their sphere of action is defined by the Act. Their rights are no longer derived from the Central Government. They are conferred by the constitution.

The control of the Central Government in respect of purely provincial matters is now very considerably withdrawn. Normally, in times of peace, the Central Government will not be able to interfere in the domestic affairs of a province.

2. The Provincial Executive

(i) The Governor

Appointment.—The head of a province is called the Governor. In the case of Madras, Bombay and Bengal, his appointment is made by His Majesty on the advice of the Secretary of State. Men to fill these posts are generally selected from the public men of England. The Governors of the remaining provinces are appointed on the advice of the Governor-General. They are members of the Indian Civil Service with long administrative experience.

Three ways of exercising powers.—By the Act of 1935, the Governor can exercise his powers in three ways, which are intended to apply to any subject of the Provincial Government:

1. Sometimes he has to act in his discretion; on such occasions, the Ministers may not be consulted at all.

2. Sometimes he has to act in his individual judgement; in such cases he is expected to ascertain the opinion of his Ministers, but may or may not accept it.

3. On all other occasions, he has to act on the advice of his Ministers; here, the views of the people's representatives are binding upon him.

His executive powers.—Ministers have to be chosen and summoned by the Governor, and can be dismissed by him. He presides over their meetings. He has to make rules for the convenient transaction of the business of the Provincial Government. Ministers and secretaries are required to transmit to him all important information about the working of their departments.

The Governor has to exercise closer supervision over the police department. He has also special power to safeguard the interests of the superior Services. Their appointments, promotions, transfers, etc., are directly subject to his control. No order which punishes or censures them can be passed except by him. He appoints the Chairman and other members of the Provincial Public Service Commission.

His legislative powers.—The Governor can summon the legislative chamber or chambers of the province, can prorogue them, and dissolve the Lower House. He can address either chamber or both of them together. His assent is required for any Bill passed by the provincial legislature.

The Governor is given the power of issuing ordinances. They are to be of two types. One may be promulgated on the advice of Ministers. It must be placed before the legislature immediately after that body meets. The other can be issued in his discretion. It need not be placed before the legislature, and can operate for a period not exceeding six months.

The Governor is further empowered to pass what are known as Governor's Acts. They will be entirely of his making. He can pass them whenever he feels that legislation is necessary for the proper discharge of his duties. This is a simpler and more direct method than that of certification. The Governor can also restore any cuts in expenditure that may be made by the legislature.

His financial powers.—It is the duty of the Governor to cause the budget of the province to be prepared and placed before the legislature. The budget must show separately the items which are votable

and those which are non-votable by the legislature. The Governor can restore a grant which has been reduced or rejected by the legislature, if he thinks that any of his Special Responsibilities are involved. Bills for imposing or increasing a tax or for regulating the borrowing of money must be introduced only on his recommendation.

His Special Responsibilities.—The Governor has the following Special Responsibilities. He has to fulfil them in the exercise of his individual judgement.

1. Prevention of any grave menace to the peace and tranquillity of the province.
2. Safeguarding the interests of the minorities.
3. Securing the rights and interests of the Services.
4. Preventing any kind of discrimination against British citizens.
5. Securing the good government of the partially excluded areas.
6. Protecting the rights of Indian States.
7. Securing the execution of the orders of the Governor-General.

These responsibilities pertain to all subjects of the provincial administration.

His emergency powers.—Sometimes a grave constitutional crisis may arise in the province. The Governor and the Legislature may not agree and there may arise a serious deadlock. The machinery of Government may come to a standstill. In such circumstances, the Governor can issue a Proclamation and may assume to himself all or any of the powers vested in any provincial authority.

(ii) The Council of Ministers

Appointment.—The administration of a province is conducted by a Council of Ministers, corresponding to the Cabinet in England.

Every Minister must be a member of the provincial legislature. The Governor has to send for the leader of the largest party in the legislature and entrust him with the task of forming the Ministry. It therefore means that the executive is practically elected by the people. That is one of the essential features of responsible government. Where there are strongly organized politicial parties, the system will work effectively and smoothly.

Qualifications, tenure, and salary.—Ministers are usually leading members of the political party in power. They must be men of some reputation and influence in the country. They may not be trained administrators but are expected to possess a quick grasp of things and a wide outlook.

The number of Ministers in a province is not fixed by the Act. It varies according to convenience. In the bigger provinces it may be anything between six and ten. In the smaller provinces it may be between three and six. There are no rigid restrictions imposed by law.

A Ministry continues to be in power as long as it enjoys the confidence of the legislature. It has no fixed tenure. Generally, it may be expected to hold office for five years at a stretch. That is the period of life of the Provincial Legislative Assembly. A popular Ministry may come into power again after a general election. On the other hand, an unpopular

Ministry may have to resign office even before the period of five years.

The salaries of Ministers are fixed, by an Act of the provincial legislature. They are thus determined by the people's representatives. However, the amounts are not submitted every year for the legislature's vote. They are charged on the revenues of the province and put in the non-votable list. In provinces where the Congress party was in power, the Ministers' salaries were fixed at Rs. 500 per mensem in 1937. Now they have been increased on account of a very high rise in prices.

Collective responsibility.—The Ministry works on the cabinet principle. All Ministers come into office and go out of office together. They are members of the same party. Their outlook and ideals are similar to a great extent. If one of them is criticized, all will share the criticism. If all decide upon a certain policy, an individual member will agree to support it, even if he does not like it. The cabinet is one homogeneous body.

Method of working.—The provincial subjects are divided into different groups. Each such group is called a portfolio in political language. It is given in charge of an individual Minister. The number of subjects that are included in a particular portfolio or group are decided according to convenience. They differ from time to time and from province to province. It does not always happen that there is a perfectly equal distribution of work among all Ministers. Some may have more departments, others may have less. It all depends upon the circumstances of the party.

Matters of routine and minor detail in a department

are disposed of by a Minister in his discretion. He need not consult his colleagues about them. On the other hand, questions of principle and policy have to be placed before the whole cabinet. That body fully deliberates on them and takes the final decision, which has to be accepted by all.

The Prime Minister.—The leader of the Ministry is called the Prime Minister or Premier. Sometimes he is designated as the Chief Minister. He is the recognized leader of his party. When a party has secured the largest number of seats in the legislature, the Governor invites its leader to form the Ministry. He chooses his colleagues and submits their names to the Governor for his acceptance.

In England, the King does not attend the meetings of the cabinet. The Prime Minister presides over them. In India, the Governor attends such meetings, presides over them and takes an active part in their proceedings. The Prime Minister of the province is of course the chief centre of political interest. He is the spokesman of his colleagues. He also symbolizes the main current of popular opinion for the time being. He therefore wields immense influence over the administration.

3. The Provincial Legislature

Chambers in the different provinces. Till the Act of 1935, every province had only one legislative council. Now things have changed. The Act has prescribed that there shall be two legislative bodies in some provinces and only one in others. Every province has a Legislative Assembly. Madras, Bombay, Bengal, the United Provinces, Bihar and Assam have also, in addition to the Legislative

Assembly, another chamber known as the Legislative Council.

The Legislative Assembly. The Legislative Assembly of a province is a democratic body. The number of its members is large. The franchise for its election is fairly low. It may be taken to represent, more or less, the people of the province, and its authority and prestige are therefore great. This chamber has a tenure of five years. It elects its own president, who is known as the Speaker.

The Legislative Council. The Legislative Council corresponds to the Upper Chamber in other countries. It is intended to be specially representative of aristocrats, big land-holders and wealthy merchants. The franchise for its election is therefore very high. However, it is possible for a small number of comparatively poor persons to get into the Council if they are distinguished in learning or public service. The chamber elects its own president.

The Legislative Council is a permanent body, and is not liable to dissolution like the Legislative Assembly. Its individual members have a tenure of nine years. One-third of the total number of its members retire every three years. The Council has almost all the powers that are possessed by the Assembly; only it cannot vote grants of expenditure for the Provincial Government. That is the exclusive privilege of the Lower Chamber.

Franchise for the Chambers. The following is a brief summary of the principal franchise qualifications in the different provinces:

I. MADRAS

(*a*) The Legislative Assembly: (*i*) those who pay

the motor vehicle tax or a profession tax or a property tax or house-tax to any municipality or local board, or who are assessed to income-tax; (*ii*) those who are registered land-holders, inamdars, rayatwari pattadars, or occupancy tenants; (*iii*) those who are literate. Women possessing these qualifications are allowed to vote. A woman is also allowed to vote if her husband is assessed to pay income-tax or pays an annual house rent in the city of Madras of not less than Rs. 60 or pays property or profession tax of not less than Rs. 3 per year or holds land of an annual rental value of not less than Rs. 10.

(*b*) The Legislative Council: (*i*) those who pay income-tax on an income of not less than Rs. 7,500 per year; (*ii*) those who hold land of an annual rental value of not less than Rs. 300; (*iii*) those who hold titles not less than Rao Bahadur; (*iv*) those who have been members of any legislature, executive councillors, ministers, members of a university senate, high court judges, presidents of municipalities or district boards, or chairmen of central co-operative banks, etc. Women possessing these qualifications have the right to vote. A woman can also vote if her husband is assessed to income-tax on an annual income of not less than Rs. 20,000 or holds land the annual rent value of which is not less than Rs. 1,500.

II. BOMBAY

(*a*) The Legislative Assembly: (*i*) those who pay income-tax; (*ii*) those who hold land assessed to a land revenue of not less than Rs. 8 per year; (*iii*) those who pay an annual house rent of not less than Rs. 60 in the city of Bombay or Rs. 18 in any other place; (*iv*) those who have passed the matriculation

or school leaving examination. Women possessing these qualifications can vote. A woman can also vote if her husband pays income-tax or holds land assessed to an annual revenue of not less than Rs. 32 or if she is literate.

(*b*) The Legislative Council: (*i*) those who pay income-tax on an annual income of not less than Rs. 15,000; (*ii*) those who hold land assessed to a land revenue of not less than Rs. 350 per year; (*iii*) those who are sardars; (*iv*) those who hold titles not less than that of Rao Bahadur; (*v*) those who have been members of any legislature, executive councillors, ministers, members of a university senate, judges of high courts, presidents of municipalities or district local boards, chairmen of central co-operative banks, etc. Women possessing these qualifications have the right to vote. A woman is also allowed to vote if her husband is assessed to income-tax on an annual income of not less than Rs. 30,000 or if he holds land assessed to an annual land revenue of not less than Rs. 2,000 or if he is a sardar, etc.

III. BENGAL

(*a*) The Legislative Assembly: (*i*) those who pay the motor vehicle tax, or income-tax, or a tax or licence fee to the Calcutta Corporation, or municipal tax of not less than As. 8, or road and public works cess of not less than As. 8, or the chaukidari tax or union rate of not less than As. 6, every year; (*ii*) those who have passed the matriculation or an equivalent examination. Women possessing these qualifications are given the right to vote. A woman is also entitled to vote if her husband owns or occupies, in the city of Calcutta, a house valued for assessment purposes at not less than

Rs. 150 per annum or, in any other city, if he pays municipal fees or taxes of not less than Re. 1-8-0 per year, etc.

(*b*) The Legislative Council: (*i*) those who pay income-tax on an annual income of not less than Rs. 5,000; (*ii*) those who hold titles not less than Rao Bahadur; (*iii*) those who have been members of any legislature, executive councillors, ministers, members of the senate of a university, high court judges, presidents of municipalities or district boards, chairmen of central co-operative banks, etc.; (*iv*) those non-Mohammedans who in Burdwan and Presidency divisions pay an annual land revenue or rent or both of not less than Rs. 2,000, and in the divisions of Dacca, Rajshahi and Chittagong not less than Rs. 1,500; (*v*) those Mohammedans who pay not less than Rs. 250 per year as land revenue or rent or both. Women possessing these qualifications have the right to vote. A woman can also vote if, in the case of non-Mohammedans, her husband pays income-tax on an annual income of not less than Rs. 12,000 or pays as a proprietor land revenue of not less than Rs. 7,500 per year in Burdwan and Presidency divisions and not less than Rs. 5,000 in Dacca, Rajshahi and Chittagong divisions. In the case of Mohammedans the husband must pay income-tax on income of not less than Rs. 6,000 or land revenue of not less than Rs. 600 per year.

IV. THE UNITED PROVINCES

(*a*) The Legislative Assembly: (*i*) those who are assessed to income-tax or who pay municipal tax on an income of not less than Rs. 150 per year; (*ii*) those who are owners or tenants of a house the rental

value of which is not less than Rs. 24 per annum; (*iii*) those who own land which is assessed for land revenue of not less than Rs. 5 per year or those who as tenants pay rent of not less than Rs. 10 per annum; (*iv*) those who have passed the upper primary examination, etc. Women having these qualifications are allowed to vote. A woman also gets the right to vote if her husband is the owner or tenant of a house the rental value of which is not less than Rs. 36 per year or who owns land assessed at not less than Rs. 25 or pays as a tenant not less than Rs. 50 per year as rent or pays income-tax, etc.

(*b*) The Legislative Council: (*i*) those who pay income-tax on an annual income of not less than Rs. 4,000, hold a title not lower than Rao Bahadur or have been members of any legislature, executive councillors, ministers, members of the senate of a university, high court judges, presidents of municipalities or local boards, chairmen of central co-operative banks, etc.; (*ii*) those who pay land revenue of not less than Rs. 1,000 per year or those who pay as tenants not less than Rs. 1,500 per year. Women possessing these qualifications are given the right to vote. They also get the right if the husband pays income-tax on not less than Rs. 10,000 per year or land revenue of not less than Rs. 5,000 per year, etc.

V. THE PUNJAB

The Legislative Assembly: (*i*) those who pay income-tax or a direct municipal tax of not less than Rs. 50 per year; (*ii*) those who pay land revenue of not less than Rs. 5 per year or who are tenants of not less than six acres of irrigated or twelve acres of unirrigated land; (*iii*) those who own or occupy

immovable property of a rental value of not less than Rs. 60 per year; (*iv*) those who have attained the primary educational standard. Women having these qualifications are allowed to vote. A woman can also vote if her husband pays income-tax or a direct municipal tax of not less than Rs. 50 per year or land revenue of not less than Rs. 25 per year, etc.

VI. BIHAR

(*a*) The Legislative Assembly: (*i*) those who pay income-tax, or not less than Re. 1-8-0 as municipal tax, or not less than As. 9 as chaukidari tax; (*ii*) those who pay house rent of not less than Rs. 24 per year in Jamshedpur or not less than Rs. 6 per year in other places; (*iii*) those who have matriculated. Women possessing these qualifications have the right to vote. A woman can also vote if her husband pays income-tax, or not less than Rs. 3 as municipal tax, or not less than Rs. 2-8-0 as chaukidari tax, or pays house rent of not less than Rs. 144 in Jamshedpur and not less than Rs. 24 in other places per year, etc.

(*b*) The Legislative Council: (*i*) those who pay income-tax on not less than Rs. 7,500; (*ii*) those who pay, in a Mohammedan constituency, land revenue of not less than Rs. 375 per annum or, in any other constituency, not less than Rs. 600 per year; (*iii*) those who hold titles not lower than Rao Bahadur; (*iv*) those who have been members of any legislature, executive councillors, ministers, members of the senate of a university, high court judges, presidents of municipalities or district boards, chairmen of central co-operative banks, etc. Women having these qualifications can vote. A woman is

also given the right to vote if her husband pays income-tax on not less than Rs. 20,000 or holds land paying a revenue of not less than Rs. 1,200 in the case of Mohammedans and not less than Rs. 2,400 in the case of others, etc.

VII. THE CENTRAL PROVINCES AND BERAR

The Legislative Assembly: (*i*) those who pay income-tax, or a municipal tax assessed on a haisiyat of not less than Rs. 75; (*ii*) those who pay land revenue of not less than Rs. 2 per year; (*iii*) those who own or occupy a house of an annual rental value of not less than Rs. 6; (*iv*) those who have passed an examination giving admission to the Nagpur University. Women possessing these qualifications have the right to vote. A woman is also qualified to vote if her husband pays not less than Rs. 35 per year as land revenue or occupies a house of an annual rental value of not less than Rs. 36, etc.

VIII. ASSAM

(*a*) The Legislative Assembly: (*i*) those who pay income-tax or not less than Rs. 2 (or in some areas Re. 1-8-0, or Re. 1, or As. 8) as municipal tax or chaukidari tax per year; (*ii*) those who pay land revenue of not less than Rs. 7-8-0 per year or those who pay Rs. 7-8-0 as rent; (*iii*) those who have passed the middle school leaving examination. Women possessing these qualifications have the right to vote. A woman can also get the right if her husband pays income-tax, or municipal taxes varying from Rs. 2 to Re. 1 per year or if he pays land revenue of not less than Rs. 15 per year, etc.

(*b*) The Legislative Council: (*i*) those who pay

income-tax on not less than Rs. 3,000 per year or land revenue of not less than Rs. 500 per year; (*ii*) those who hold titles not lower than Rao Bahadur; (*iii*) those who have been members of any legislature, executive councillors, ministers, members of the senate of a university, high court judges, presidents of municipalities or local boards, chairmen of central co-operative banks, etc. Women who possess these qualifications are given the right to vote. A woman is also allowed to vote if her husband pays income-tax on not less than Rs. 6,000 or pays land revenue of not less than Rs. 1,000 per year, etc.

IX. THE NORTH-WEST FRONTIER PROVINCE

The Legislative Assembly: (*i*) those who pay income-tax, or not less than Rs. 50 as municipal tax, or not less than Rs. 2 as district board tax; (*ii*) those who occupy a house of the rental value of not less than Rs. 48 per year; (*iii*) those who are owners or tenants of not less than six acres of irrigated and not less than twelve acres of unirrigated land or who pay land revenue of not less than Rs. 5 per year; (*iv*) those who have passed the matriculation or, in rural areas, the fourth class primary examination. Women who possess these qualifications have the right to vote. A woman is also entitled to vote if her husband has an income of at least Rs. 40 a month or if he pays income-tax or if he pays house rent of not less than Rs. 48 per annum or pays land revenue of not less than Rs. 10 per annum, etc.

X. ORISSA

The Legislative Assembly: (*i*) those who pay income-tax, or not less than Re. 1-8-0 as municipal tax;

(*ii*) those who have passed the matriculation examination; (*iii*) those who pay chaukidari tax of not less than As. 9 or land revenue of not less than Rs. 2 per year, there being slight variations in the amounts according to districts. Additional qualifications are also prescribed for women.

XI. SIND

The Legislative Assembly: (*i*) those who pay income-tax; (*ii*) those who own or occupy as permanent tenants land assessable for land revenue at not less than Rs. 8 per year; (*iii*) those who cultivate as *haris* land assessed at not less than Rs. 16 land revenue per year; (*iv*) those who pay an annual house rent of not less than Rs. 30 in Karachi and Rs. 18 elsewhere; (*v*) those who have passed the matriculation examination. Women possessing these qualifications are allowed to vote. A woman also gets that right if her husband is assessed to income-tax or pays Rs. 32 as land revenue per year or pays an annual house rent of not less than Rs. 60 in Karachi or not less than Rs. 36 elsewhere.

Functions and powers of the chambers. (1) All laws required for a province must receive the sanction of the Legislative Assembly and also of the Legislative Council where it exists. These bodies may or may not pass a Bill, or may pass it with amendments. (2) Members of the legislature can ask questions and supplementary questions, can move resolutions, adjournment motions and motions of no-confidence. Important discussions on public affairs can take place in this manner on the floor of the house. This serves as a sound check on the administration. (3) The budget of a province is to be divided into

two parts. One of them is charged on the revenues of the province, and is not votable by the legislature, though the legislature may be permitted to discuss it. The other part is under the control of the legislature. Grants of expenditure in this sphere are voted by the Legislative Assembly, which has power to refuse or reduce a grant. That privilege is not enjoyed by the Legislative Council. In exceptional cases, the Governor can restore a cut made by the Legislative Assembly.

Joint meeting. Sometimes a serious disagreement may arise between the Legislative Council and the Assembly. One chamber may have passed a Bill and the other chamber may have amended it or thrown it out. In such cases the Governor may summon the chambers to a joint sitting. The vote of the majority of members present at such a meeting decides the issue in dispute, and the conflict between the chambers is thus ended.

4. Relation of the Executive to the Legislature

The principle of responsibility. The Act of 1935 has introduced parliamentary government in the Indian provinces. It is an essential feature of this system that the executive is completely responsible to the legislature. In England, for instance, the Parliament, (or more correctly, the House of Commons) is supreme in the affairs of the State. It reflects the will of the people and its authority is unquestioned and final.

Subordination of the Ministers to the Legislature. The provincial executive is now constituted by the Ministers. They are all members of the

provincial legislature and hold office because they command its confidence. Most of the expenditure in their departments is voted by that body. On an adverse vote of the legislature, the Ministers have to resign. Their subordination to the popularly elected chambers is therefore complete. This is what is known as Provincial Autonomy.

However, there are certain limitations on the authority of the legislature itself. The superior Services in the province are not under its control. A part of the budget is beyond its vote. The Governor is empowered to pass Governor's Acts without its consideration or assent. He has also been given several Special Responsibilities. In fulfilling them, he may ignore the legislature or set aside its opinion.

SIZE OF PROVINCIAL LEGISLATURES

Name of province	Legislative Assembly (Lower Chamber)	Legislative Council (Upper Chamber)	
		Not less than	Not more than
Madras ...	215	54	56
Bombay ...	175	29	30
Bengal ...	250	63	65
United Provinces .	228	58	60
Punjab ...	175	...	...
Bihar ...	152	29	30
Central Provinces and Berar...	112	...	...
Assam ...	108	21	22
North-West Frontier Province ...	50	...	...
Orissa ...	60	...	...
Sind ...	60	...	...

VI

GENERAL

1. Administration of Justice. 2. District Administration. 3. Police. 4. Local Self-Government. 5. The Public Services. 6. The Indian States.

1. ADMINISTRATION OF JUSTICE

Function of the judiciary. The legislature makes laws. The executive government carries out the laws. The judiciary has to see to it that laws are properly carried out and that authority is not exceeded or abused. Judges usually enjoy a large degree of independence. They protect civic liberties and privileges.

Civil and criminal cases. There are two main kinds of cases which come up before courts of law. If rights to property are in dispute, they come under the category of civil cases. If there is an attack on life or property it becomes the subject of a criminal trial.

Civil suits do not involve physical punishment. On the other hand, a person condemned in a criminal trial is liable to loss of personal freedom and property. He is considered to be an offender against the State.

Separate laws are framed for civil and criminal cases. There are also separate courts to administer them. The civil court is distinct from the criminal court.

The court which tries a case in the first instance is called the original court. A dissatisfied party can

go in appeal to a higher court which then exercises what is described as 'appellate' jurisdiction.

The Federal Court. The Act of 1935 laid down that India should become a federation. It is a vital feature of a federal constitution that it should have a supreme or federal court. Accordingly provision was made for the establishment of such a court in India, and it began to function from October 1937.

The Federal Court is to consist of a Chief Justice and not more than six puisne judges. At present their number is actually three. All of them are to be appointed by His Majesty. A judge can hold office until he attains the age of sixty-five years. No one can be appointed a judge unless he (1) has been a High Court Judge for at least five years or (2) is a barrister or advocate of at least ten years' standing or (3) has been a High Court pleader in India for at least ten years.

The Court has exclusive original jurisdiction in disputes between any two of the following parties, namely, the Federation, any of the provinces, and any of the States.

The Court can hear appeals from the decisions of the provincial High Courts if important points of law are involved about the interpretation of the Act of 1935. The federal legislature may also provide that appeals in certain civil cases may lie to the Federal Court. But the amount in dispute in such cases must not be less than Rs. 50,000.

An appeal against the decisions of the Federal Court can be made to the Privy Council.

The High Courts. The supreme tribunal in an Indian province is the High Court. It consists of

the Chief Justice and other judges who are all appointed by His Majesty. They are either barristers or advocates or Indian High Court pleaders or members of the I. C. S. The High Court has very wide powers, original and appellate, in both civil and criminal cases.

The Bombay High Court tries original civil cases in the city of Bombay when the amount involved is above Rs. 2,000. It also tries all criminal cases committed to it by the Presidency Magistrates. Appeals in both civil and criminal cases throughout the province are heard by the High Court. It has also to supervise and inspect the working of subordinate courts in the province.

District Courts. Generally, in each district there is a District Court. It is presided over by the District Judge, who is also known as the Sessions Judge when he tries criminal cases. Like the High Court, the District Court has original and appellate jurisdiction both in civil and criminal matters. Its authority extends only to the limit of the district. It supervises and inspects the working of all subordinate courts in the district.

Certain kinds of civil suits, specified by law, have to be tried by the District Judge sitting as an original court. He also hears appeals from the decisions of Second Class Civil Judges. The Sessions Court—which is only another name for the District Court—tries all criminal cases that are committed to it by the magistrates. It also hears appeals in cases which have been disposed of by the magistracy in their own jurisdiction.

Below the District Judge there are two different kinds of judicial officers in a district. The Civil

Judges are intended to try civil suits exclusively. The Magistrates are in exclusive charge of criminal work. Both of them have only original jurisdiction.

Civil Judges. Civil Judges are of two grades, Second Class and First Class. A Second Class Civil Judge can try cases where the amount involved does not exceed Rs. 5,000. A First Class Civil Judge can try cases involving any amount of money without limit. For the trial of suits where only small sums are involved Small Causes Courts are formed in important cities. Usually no appeals are allowed against their decisions.

Magistrates. Magistrates who try criminal cases are divided into three grades. A First Class Magistrate can pass a sentence up to two years' rigorous imprisonment and Rs. 1,000 as fine. A Second Class Magistrate can pass a sentence up to six months' rigorous imprisonment and Rs. 200 as fine. A Third Class Magistrate can pass a sentence up to one month's rigorous imprisonment and Rs. 50 as fine.

The Collector is also the District Magistrate. He has to supervise the work of the other magistrates and distribute work among them. The Assistant and Deputy Collectors and Mamlatdars have magisterial powers within the area under their charge. For big cities there are City Magistrates and for presidency towns, Presidency Magistrates.

Sometimes, magisterial powers are given to Civil Judges. That is a step for facilitating the separation of executive from judicial functions.

There are also honorary magistrates in cities and important places in the district. They are of the same three grades and possess the same powers as the stipendiary magistrates. They usually sit as a

bench. Comparatively unimportant cases are assigned to their courts for trial. The Bombay Government decided in 1946 to discontinue the system of giving judicial work to honorary magistrates.

Jury and assessors. In important criminal cases the judge is given the assistance of a jury or of assessors. The verdict of the jury is binding on the judge. The opinion of assessors may or may not be accepted by him. If the judge differs from the jury he refers the matter to the High Court, whose decision is final. The jury or the assessors consist of citizens who are men of status. They are not experts in law. In fact practising lawyers are prevented from being jurors or assessors. As men of common sense and intelligence they hear the whole case and arrive at certain conclusions on the question of facts. It is expected that justice is likely to be more humane by this arrangement.

2. District Administration

An Indian province is a vast area. For the work of administration it is divided into smaller units, the most important of which is the district. The size of a district varies from two to ten thousand square miles and its population from one to three million souls.

The Collector. The Collector is the head of the district. He supervises the collection of land revenue. He is also the District Magistrate and has to maintain peace and order in the area in his charge. He distributes work among the subordinate magistrates. Police, jails, municipalities, local boards, registration, roads, public works are all subjects in which the Collector is directly or indirectly concerned. He

has to administer famine relief and make grants of loans to agriculturists.

For the larger part of the year the Collector is on tour in the district. He establishes personal touch with the people and acquires first-hand information about local conditions. To the people in villages, far removed from the headquarters of Government, the Collector is the representative of the Raj. He is the eyes, the ears, the mouth and the hands of the Government which sits in the capital city. On his resourcefulness, tact and good temper depends the smooth course of the administration. He must be a man of versatile talent. Usually a good deal of discretion is left to him.

Subordinate officers. The district is divided into sub-divisions which are in charge of Assistant or Deputy Collectors, while the unit known as a taluka is still smaller. It is administered by a Mamlatdar. Last of all comes the village with its Talati and Patil (or Patel). These subordinate officials have to collect land revenue. They are also magistrates of different grades who have to maintain peace and order in their respective territories.

Other officers. In the capital city of the district are stationed the heads of various other departments. There are thus the Civil Surgeon, the Executive Engineer, the District Superintendent of Police and similar officers in the Co-operative, Forest and other departments. The District Judge is the head of the judiciary in the district.

Commissioners. Several districts are grouped together to form what is called a Division. A Commissioner is placed at its head. He has no magisterial powers. He is mainly a revenue official and

keeps general supervision over administration in the districts under his charge. There are three Commissioners in the province of Bombay.

3. POLICE

It is the duty of Government to keep internal peace. It must secure the life and property of its citizens. For this purpose the Police Department is specially organized. Its duty is to detect crimes and to bring the offender before the appropriate judicial authority.

The head of the Police Department in each province is known as the **Inspector-General of Police.** He keeps control over the whole of the police force in the province. He is assisted by Deputy Inspectors-General who are appointed for different parts or 'ranges' of the province.

The police arrangements of a district are in charge of a **Superintendent** of police. He is responsible for preserving proper order in the district. He works under the general guidance of the District Magistrate, that is, the Collector of the district. There are Assistants or Deputy Superintendents to help him in his duties.

A district is further sub-divided into 'circles' for police purposes. An **Inspector** is appointed for each circle. A circle is further split up into smaller areas each of which has got a police station. Usually these are placed in charge of a Sub-Inspector.

Railway police form a distinct branch. In unsettled areas like the Frontier, military police are kept. Police forces are also kept in reserve for use in emergencies. The C. I. D., or Criminal Investigation Department, is entrusted with the duty of inquiring into crimes of all kinds.

4. Local Self-Government

The end and purpose of all Government is to create excellent conditions of life for the citizen. It is not enough to have highly-paid and highly-placed official dignitaries. Efficient armies and well-guarded prisons are not the final goal. In a civilized community, even to the meanest individual, life must signify energy, joy and growth.

Comfortable houses with healthy and delightful surroundings, clean and copious water supply, perfect sanitation and drainage, smooth roads for transport, abundant facilities for education and recreation, are among the happiest achievements which a nation can aspire to realize. They represent the fulfilment of organized existence.

Yet these are matters which cannot be easily taken up by the central authority. Interest in such problems may be purely local, and control exercised locally may prove extremely beneficial. A nation or a province is a wide territory with a variety of conditions. In all advanced countries local bodies are specially formed to manage affairs which, however vitally important, are of purely local interest.

Lord Ripon gave an impetus to the development of such bodies in India. He felt that they would prove an excellent training-ground for public work and leadership. Administration of the civic affairs of a city would help to give an insight into the general administration of the land. The Central Government's burden would also be reduced.

Local self-government was made a provincial subject by the Montford Reforms. It was transferred to the Ministers. The provincial legislature has now

supreme authority over this department. Several measures have been recently passed liberalizing the constitution and powers of local bodies.

Local bodies are of two kinds. Those that function for cities are called **municipalities.** Those that function for rural areas other than cities are called **local boards.** For villages there are **panchayats.**

The functions of local bodies are divided into two groups, obligatory and discretionary. The former must be and the latter may be performed.

The following are the principal **obligatory functions**:—Lighting, watering and cleaning public streets and places; extinguishing fires; maintaining public streets, markets, slaughter-houses, drains, privies, washing places, drinking fountains, etc.; registering births and deaths; public vaccination; establishing and maintaining public hospitals and dispensaries; maintaining primary schools.

The following are some of the **discretionary functions**:—Maintaining public parks, libraries, museums, rest houses, taking a census, maintaining a magisterial court; in short, all measures which are likely to promote public safety, health, convenience or education.

The performance of these duties means large expenditure of money. The power of collecting revenue must therefore be conferred upon local bodies. The following **sources of income** are allowed to them:—(1) a rate on buildings or lands, (2) a tax on vehicles, (3) an octroi duty, (4) sanitary cess, (5) water-rate, (6) lighting tax, (7) tax on pilgrims, (8) tax upon drainage, sewage, conservancy, etc. In the case of local boards the most important source of income is the cess upon land. It can be collected at

a rate of up to As. 2 in the rupee along with land revenue.

Constitution. Municipalities and local boards consist of a number of members varying according to the size of the city or the district. Till 1938, more than three-fourths of the members used to be elected and the remainder nominated by the Government. But the principle of nomination has been now abolished. Citizens owning or occupying houses of an annual rental value of not less than Rs. 12 have the right of giving a vote. Municipalities and local boards elect their own presidents and vice-presidents. They also appoint executive officials like the Chief Officer, the Engineer, the Health Officer, the Education Officer and so on. These officers and the staff under them have to carry out municipal administration in accordance with the instructions given by the general board of members.

5. The Public Services

Every Government has to perform a large number of administrative functions. A large staff of servants has to be maintained for that purpose. They are naturally divided into different grades. For carrying on the more difficult and responsible kind of work, men of great ability and talent are required. A stiff intellectual test is therefore prescribed for their recruitment. Their salaries, promotions, pensions, etc., are also made attractive. For the more routine kind of work men of lesser calibre and attainments are sufficient. Their scales of salary are modest.

The Services in India are divided into three grades. Every department has its own staff and its members belong to either one or other of these grades. The

Imperial grade is the highest; next comes the Provincial; and last of all comes the Subordinate grade.

Members of the Imperial grade are appointed by the Secretary of State and are not liable to dismissal by a lesser authority. They may have to serve in any part of India but are usually assigned to a province. Some of them are transferred to the Central Government. The salaries of the Imperial Services are determined by the Secretary of State and are not votable by the legislatures in India. They are a charge upon the central or provincial exchequer as the case may be. Disciplinary action against them cannot be taken by the Ministers under whom they may be serving. Their interests are specially safeguarded by Governors and the Governor-General.

Senior among the Imperial Services is the I.C.S., or the Indian Civil Service. It is recruited partly by a competitive examination and partly by nomination. The examination is held in Delhi and London. Most of the important posts like those of Collectors, District Judges, Commissioners, Secretaries, Executive Councillors, Governors of provinces other than Madras, Bombay and Bengal, High Court Judges, are held by members of this Service. The I.M.S., I.P.S., I.F.S., I.E.S., I.S.E., are similar grades in the medical, police, forest, education and engineering departments respectively. Their members hold the higher posts and receive good salaries.

The Provincial and Subordinate grades are recruited by the Provincial Governments, which also fix the conditions of their service. The salaries of these grades are votable by the provincial legislatures. Disciplinary action against them, including dismissal,

can be taken by responsible Ministers. They are thus entirely under the control of the province.

Posts of importance but of a secondary nature are held by members of the Provincial Service. Deputy collectors, senior mamlatdars, subordinate judges, headmasters of high schools, some professors in colleges, deputy directors of agriculture or education, assistant registrars of co-operative societies, superintendents of excise and similar offices in other departments are filled by these men. Some of them are even promoted to higher posts which are usually held by the Imperial Service. Admission to this Service is by nomination or promotion.

A very large number of persons is placed in the subordinate grade. The lower officials in every department, clerks, typists, schoolmasters, etc., are found in this category. Their duties are mostly of a mechanical character and their emoluments are meagre. Their appointments are made by nomination. Some brilliant members of this grade may be promoted to the higher provincial grade.

There are two separate sets of Services to administer the departments of the Central and Provincial Governments. They are controlled respectively by the two authorities.

After the proposals of the Cabinet Mission and the setting up of an Interim Government in 1946 it has been decided to abolish the Imperial Services. All grades will now be recruited and controlled by the Governments in India.

A body known as the Public Service Commission is constituted for every province or for two or more provinces combined. A similar Commission is also established for the Government of India. It is a duty

of these bodies to hold examinations for the recruitment of different Services as may be desired by their Governments. The Commissions are expected to be independent and impartial and appointments made by them are expected to be uninfluenced by favouritism.

6. The Indian States

When India was being conquered by the East India Company some of its rulers and chiefs did not resist the invaders to the end. They offered early submission and established friendly relations with the conquerors. Naturally they were then treated with favour. Some of their territories were left to them. On condition of remaining loyal to the supreme power, they were allowed to exercise governmental authority in their own dominions. Modern Indian States are the relics of past Indian history. Their rulers are the descendants of those who once were independent kings of different parts of India.

At present there are in all about 700 Indian States. The total area covered by them is 675,267 square miles. Their population is nearly 80 millions. There is the greatest variety in the size, population, income and powers of the different States. Some are very small with an income of only a few thousand rupees. Others, like Hyderabad, Baroda and Mysore, are as big as some of the independent countries of Europe. The Nizam's Dominions yield a revenue of about Rs. 7 crores, which is equal to the revenue of the Central Provinces and Berar, and is bigger than the revenues of smaller provinces like Orissa, Assam or Sind.

No Indian State can enter into relations with a

foreign nation or with other Indian States. Disputes between State and State must be referred to the paramount power. Perfect protection against all external danger is guaranteed by that power. The States have no need to keep large armies. The number of forces which they may keep, their equipment and their armament are prescribed by the Suzerain.

In internal administration, the widest measure of liberty is allowed to the Princes. They can make their own laws which are binding on their subjects. They can appoint executive officials and set up law courts. Their position as rulers of their subjects is respected. Normally there is little interference from the higher authorities in purely State questions. The bigger States have the power of life and death over their subjects. Some of them, like Hyderabad, have their own coinage and their own postal system.

However, abuses may creep in in the internal administration of the Indian States. Discipline may vanish altogether. Officers may become corrupt and demoralized. In short, anarchy may be threatened. Under such abnormal circumstances the paramount power can interfere. It is its duty to restore peace and order. It can dictate measures for removing abuses and carrying out necessary reforms. Even the administration of the State can be temporarily taken over by the paramount power.

If a ruling Prince is a minor, the Government of India appoints regents to carry on the affairs of the State. These arrangements terminate after the Prince attains his majority.

Special colleges are established to impart education to sons of ruling chiefs. Ajmer, Rajkot, Indore

and Lahore are the centres where these institutions are located.

In the larger States of Hyderabad, Mysore, Baroda and Gwalior, the Government of India is represented by a Resident. Other States are formed into groups, and in each is stationed an Agent to the Governor-General. These are the Baluchistan, Rajputana, Central India, Western India, Southern Maratha, and Madras Agencies. Even smaller States are now placed under the direct control of the Government of India.

Residents and Political Agents are the channel of communication between the States and the Government of India or between one State and another. The Government of India has a separate department for looking after the affairs of Indian States. The Viceroy himself is in charge of that department. Residents and Political Agents are under its direct control.

It was proposed in the Montagu-Chelmsford Report that a Council of Princes should be formed. Accordingly, after much discussion, the Narendra Mandal, or the Chamber of Princes, was inaugurated in 1921. Its main function is to discuss matters affecting the States generally or those that are of common interest to the States and British India. The internal affairs of individual States or the actions of individual rulers are not to be discussed by the Chamber at all.

A Standing Committee of the Chamber is elected every year to look after the details of work. This Committee meets twice or thrice a year at the headquarters of the Government of India. It is one of its important functions to discuss with the various

departments of the Government of India those questions which are the common concern of the two parties. Customs, posts and telegraphs, police arrangements and railways which run through the States are matters where the interest of the States and of the Government of India are entangled.

The larger States are given individual representation in the Chamber. The smaller ones are grouped into different units. Each group elects a certain number of representatives. The Chancellor is elected by the Chamber itself. Sessions of the Chamber are held every year.

VII

A SHORT SUMMARY OF THE PROPOSALS OF THE CABINET MISSION

A—Form of the Constitution; this will be the broad basis of the future framework.

(1) There should be a Union of India embracing both British India and the Indian States; it should deal with the following subjects: Foreign Affairs, Defence and Communications; and should have power to raise the necessary finance for the above subjects.

(2) The Union should have an Executive and a Legislature.

(3) All subjects other than Union subjects should vest in the provinces and the States.

(4) Provinces should be free to form Groups with Executives and Legislatures.

(5) The Union and Group arrangement may be reconsidered after ten years.

B—The Constitution-making machinery.

(1) A Constituent Assembly should be formed, consisting of representatives elected by the Provincial Legislative Assemblies as shown below and of nominees of the Indian States.

(2) Madras will elect 49, Bombay 21, U. P. 55, Bihar 36, C.P. 17 and Orissa 9; this group will form Section A. Punjab, North-West Frontier Province and Sind will elect 28, 3 and 4 respectively; this group will form Section B. Bengal and Assam will elect 60 and 10 respectively; this group will be called Section C. The total of British Indian representatives

will then be 292. The maximum number for the Indian States shall be 93. The grand total is thus 385.

(3) At a preliminary meeting of the Constituent Assembly the Chairman and the Minorities Advisory Committee will be elected.

(4) After this first meeting the provincial representatives will divide up into the three sections mentioned above.

(5) The sections shall proceed to settle the Provisional Constitutions for the provinces included in each section and shall also decide whether any Group constitution shall be set up for those provinces and if so, the Group subjects.

(6) The whole Constituent Assembly will reassemble for the purpose of settling the Union Constitution.

(7) As soon as the constitutional arrangements have come into operation a province may opt out of its Group.

(8) There will be an Advisory Committee on the rights of citizens, minorities and tribal and excluded areas; it will be fully representative of the interests concerned and report on the list of fundamental rights, protection of minorities, etc.

(9) A treaty will be negotiated between the Union Constituent Assembly and the United Kingdom to provide for certain matters arising out of the transfer of power.

THE BRITISH CONSTITUTION

I

INTRODUCTORY

1. What is a Constitution? 2. The Legislature, the Executive, and the Judiciary. 3. The Meaning of Responsible Government.

1. What is a Constitution?

Civilized communities live under an authority which is called Government. This authority is empowered to make laws and to enforce them. Citizens are required to obey its orders. Disobedience to them involves punishment. Even to the weakest citizen, security of life and property is assured.

In such a society no individual is wholly free to act according to his own will. He is subject to the regulations of the State. Unfettered liberty of action to all may mean chaos. Restraints are therefore imposed on all for the sake of each, and on each for the sake of all.

Government is primarily a force which keeps society together. It can also be made an instrument of social progress.

The form of government is not the same everywhere. It has varied from time to time and from place to place.

Authority may be exercised by only one individual. We then call it Monarchy or Kingship.

Or it may happen that a small group of persons has attained a position in which it can command all the rest. This is called Aristocracy or Oligarchy.

There is also another possibility. The subjects in

a State may themselves be placed in the position of governors. It will then be government of all by all. This is described as Democracy.

There may be various types of Monarchy, Aristocracy and Democracy.

The study of a constitution is concerned with the form of the State. It explains the framework of government and gives an insight into the political institutions of a country. It is an attempt to understand the machinery which is created to carry on the work of governance. Councils, Chambers, Parliaments and Cabinets are all included within its purview.

2. The Legislature, the Executive, and the Judiciary

Nowadays a government's functions are divided into three categories. There are three separate branches of government to look after them.

For the preservation and progress of the State laws must be made. That duty is performed by the Legislature.

Laws which have been made must be efficiently carried out. That responsibility is entrusted to the Executive.

There must be an authority to interpret the law. It has also to decide whether the law has been violated, in letter or in spirit, by any citizen. Even officials are not exempt from its jurisdiction. If guilt is established it can inflict a penalty on the offender. This authority is known as the Judiciary.

These distinctions were not clearly emphasized in ancient and medieval times. They were not precisely appreciated till recently. Legislative, executive and

judicial authority was often concentrated in the same individuals or body of individuals.

It is the practice of modern States to keep the three branches distinct from one another. The judiciary has acquired a position of independence in most advanced countries. However, in a country like England the executive and the legislature are interrelated.

3. The Meaning of Responsible Government

Democracy is a form of government where the *demos*, i.e. the people, are supreme; where their views and opinions dominate; where their prejudices and sentiments ultimately prevail. That is a cardinal principle of democratic rule.

Yet all democracies need not have identical systems of administration. Methods and practices of governance may differ. France, Russia, England, America are all democracies. But their structures are not uniform. Each has developed its own peculiarities. Similarly, the English constitution has its own distinguishing features.

The most prominent of these features is the operation of the principle of responsibility. In political language, that expression has now acquired a technical significance. It connotes the complete subordination of the executive to the legislature.

In a responsible government, ministers depend for their very existence on the goodwill of the law-making body. Their salaries are determined and paid by the legislatures. Other expenditure has also to be sanctioned by them. Perfect harmony must subsist between the executive and legislative branches of government. If there is a disagreement,

the executive must promptly resign. It cannot retain office for a moment after it has lost the confidence of the legislature.

There is one more essential feature of this arrangement. Not only does the legislature completely control the executive. It must itself be thoroughly representative. It must accurately reflect the opinions and the temperament of the nation as a whole. Its actions and attitude must, in the last instance, be traceable to similar predilections of the general public. In short, it must be fully democratic.

The present-day English democracy possesses both these characteristics. Its executive, i.e. the Cabinet, is purely a creature of Parliament. And Parliament, or rather, the House of Commons, is elected on the widest possible franchise, and can claim to speak with the voice of the nation.

There is thus something like a series of concentric circles. The outermost circle, having the largest circumference, is constituted by the general body of citizens. The circle formed by the elected legislature is smaller. Smallest of all is the Cabinet, with the Prime Minister occupying the centre.

It must be noted that this elaborate system was not introduced in England at one stroke. It does not symbolize the ripe fruit of conscious and prolonged thought. It is only the result of gradual growth, of historical circumstances and adjustments brought about to suit them.

II

THE EXECUTIVE

1. The Crown. 2. The Cabinet. 3. The Civil Services.

1. The Crown

The head of the executive in England is the Sovereign. This office has almost continuously existed for nearly nine centuries. There was only a small break after the execution of Charles I. The dignity and the splendour of the Sovereign are maintained undiminished till the present day.

Formerly the Sovereign enjoyed and exercised real power. All authority of government was concentrated in him.

He could make laws and exact obedience to them. He was the fountain of justice and the source of all official appointments. He nominated the Ministers and made them work under his orders. He was the guardian of the nation's peace and had power of life and death over his subjects. He was the leader in peace and war and was the head of the Church.

In strict theory all these powers still belong to the King. He has not been deprived of them by law. From the purely legal point of view it is still true to say that the King can disband the army and the navy, dismiss the civil servants, declare war and make peace. He can upset all the action of civil and military government.

In actual practice, however, the picture is quite different. New traditions and conventions have been formed. The English monarch has now only a

shadow of his former authority. He has ceased to take a direct part in the task of governance. He does not actively participate in administration. He does not take the initiative in framing policies and schemes. His possession of powers has become purely ornamental. Their exercise is now a matter of mere formality.

The responsibility for conducting the affairs of the State fully rests on the shoulders of Ministers. They are entirely under the control of Parliament. It is a constitutional maxim in England that the King can do no wrong. He invariably acts on the advice of the Ministers. In effect, it is the Ministers and Parliament who rule and not the King.

Royal prerogatives, i. e. special privileges, are no longer exercised by the monarch at his discretion. They are exercised for him and in his name by his responsible Ministers. Parliaments are summoned or dissolved at their suggestion. New peers are created on their recommendation. The Royal assent is never refused to statutes passed by Parliament. The Cabinet is formed by the Prime Minister, at the invitation of the monarch.

Formerly there was no difference between the King's personal income and national revenue. All moneys were credited to the account of the King. He had to bear the cost of administration and defence. His dignity and household had also to be maintained.

Now things have changed. National finance has been completely separated from the King's income and expenditure. His personal accounts are separated from public accounts. For the maintenance of the Sovereign and all other members of the Royal

Family, Parliament votes a definite amount of money. It is described as the Civil List. The King and his family have no right to any moneys other than those that are voted by Parliament. National finances are exclusively under the control of the House of Commons.

The Civil List of King George VI is £420,000 a year. The Crown also enjoys the revenues of the Duchy of Lancaster and the Duchy of Cornwall. They together come to about £140,000 per year.

The King is in the position of a permanent adviser to the Ministers. They must consult him and know his views. But they are free to make their own decisions and carry them out in practice. Neither in legislation nor in administration can the King impose his will upon Parliament. Nor can he tamper with the ordinary course of justice.

Today the Sovereign stands above party. His name is not associated with domestic political quarrels. He is supposed to be free from the narrow prejudices of a partisan. He inspires a sense of loyalty and devotion among all sections and classes of the people. Not only is the Ministry in power considered to be His Majesty's Government; even the party opposed to the Ministry is described as His Majesty's Opposition.

As the exalted and permanent head of the State the King's opportunities are unique. His experience is likely to be unrivalled. His knowledge is likely to be profound. His judgement is likely to be far-sighted and correct. On the whole, therefore, the advice that he tenders is entitled to the highest respect. It is treated with the greatest consideration by the body of Ministers.

Particularly in the domain of foreign policy the King's personality may wield immense influence. This was natural when most of the European governments were monarchies. Relations with foreign countries require a kind of continuity. They cannot be violently disturbed with every change of Ministry. The King may be able to prevent sudden fluctuations because he is a constant factor.

The social and non-political influence exercised by the Sovereign is considered to be highly beneficial to the State. He supplies the link with the past. His presence appeals to the historical instinct which is inborn in men. Disinterested detachment is the mark of his exalted office. It helps to keep in proper restraint petty political feuds, intrigues and dissensions in the country.

Constantly changing Ministries may give the appearance of instability to the State. However, the monarch stands stable and unaffected amidst all change and tumult. His presence tends to create a general sense of solidarity and unity.

Great Britain has expanded into an Empire. It is made up of Colonies and self-governing Dominions. Canada, South Africa, Australia and New Zealand enjoy the fullest measure of political freedom. There are few bonds which connect one unit with another. Between them and the mother-country also political ties are slender.

In these circumstances the British monarchy has acquired a new status and a new significance. It provides a great unifying influence. The monarch is the visible and outward symbol of imperial unity. Regard for the person of the King and the throne is considered to be a cementing force of great efficacy.

Various types of administrations and peoples are comprised in the Empire. They all converge towards the same centre, namely, the Sovereign.

2. The Cabinet

The executive side of the British Government is entrusted to officers known as Ministers. Collectively they form the Cabinet. This body has evolved out of the old Privy Council. But its formation was not a deliberate process.

Originally, the number of Ministers was small. But gradually the State accepted new duties and responsibilities. The size of the Cabinet was therefore increased from time to time. In normal times of peace it contains about twenty members.

The Prime Minister presides over the Cabinet. He is the leader of the party in power and the man of the greatest importance in the Cabinet. Generally he is the First Lord of the Treasury, an office which has no duties of its own.

The Chancellor of the Exchequer looks after national finance, prepares the budget and suggests ways and means to adjust income and expenditure.

There are five principal Secretaries of State. One presides over the Home Office, which looks after internal peace. Another is entrusted with Foreign Affairs. A third supervises the administration of the colonies. A fourth is placed at the head of the War Office. The fifth controls the Government of India. There is a Secretary who deals with the self-governing Dominions. The navy is given in charge of the First Lord of the Admiralty, and there is a Minister for Air.

A separate Ministry of Defence has now[1] been created to co-ordinate the work of the Ministers for Air, War and Navy.

There are five Boards to manage the departments suggested by their names. They are the Board of Trade, the Board of Education, the Board of Local Self-Government, the Board of Works and the Board of Agriculture. Each Board has a President. Generally he is given a seat in the Cabinet.

The Lord Chancellor presides over the House of Lords and is the head of the judiciary. The Lord President of the Council presides over the Privy Council. He has few administrative functions. The Lord Privy Seal is an historic office, but now there are no duties attached to it.

There are Secretaries for Northern Ireland and Scotland. There is also the Postmaster-General. The Attorney-General and the Solicitor-General are also important officers. To meet the emergency of war, some new Ministers were created, such as the Ministers of Supply, Home Security, Food, Economic Warfare, Shipping, Information, Air-craft Production, etc. For the same reason, a few officials having the status of Minister were also appointed. With the close of the war most of these new appointments were abolished.

Besides these Ministers who have a place in the Cabinet there are a few others who remain outside, and are less important. Under-Secretaries come under this category.

Technically the Cabinet is appointed by the Sovereign. Practically it is appointed by the nation. When a political party wins a majority of seats in

[1] 1 October 1946.

elections to the House of Commons, the leader of that party must be selected by the King to be his Prime Minister. The latter chooses his own colleagues and submits their names for the King's approval.

The King never attends Cabinet meetings.

All members of the Cabinet must be members of either the House of Commons or the House of Lords. They must also belong to that political party which commands the majority of votes in the House of Commons. Complete harmony must exist between the executive and the legislature.

The Cabinet is one indivisible whole. Its members have the same political views and prejudices. It is a homogeneous body. Its members work on the principle of collective responsibility. They accept or resign office together. They face public scrutiny and criticism as one individual. Whatever their internal differences, to the outside world they must appear as a united and coherent entity.

The Prime Minister. The Prime Minister is described as the keystone of the Cabinet arch. 'The keystone keeps the arch together; it depends for its position on the arch.'

He presides over the Cabinet and distributes portfolios among its members. He tries to keep a general supervision over the working of every department. Important schemes of policy cannot be formulated without his knowledge. No momentous decisions can be taken unless he has had an opportunity to express his views. In exceptional circumstances he can even demand that a particular colleague of his should resign.

As long as he retains the confidence of Parliament, the Prime Minister is the real ruler of the country.

His powers, when in office, are described as being greater than those of the American President or the German Emperor before the first Great War (1914). He derives his position of pre-eminence from the fact that he is the nation's elected chief.

He directs administration and initiates legislation. The Crown looks to him as its confidential adviser. He communicates the views of the Cabinet to the Sovereign and of the Sovereign to the Cabinet. To both he has to be loyal.

3. The Civil Services

Ministers constitute the political executive of the country. They are not necessarily experts or specialists in administration. A thorough knowledge of the department which is given to them is not expected of them. Thus the War Office may be bestowed on a lawyer. Foreign Affairs may be entrusted to a person who has never visited foreign countries. The Secretary of State for India may not have any first-hand information about Indian problems.

The head of a department is thus an avowed amateur. It is a paradox peculiar to the British system. Yet even with ignorant persons at the top to guide and to direct, British administration has the reputation of being efficient and capable. How does it happen?

The explanation is simple. Ministers are not left alone to grope in the dark. They are given the assistance of a trained body of men. This body is known as the Permanent Civil Service.

The Civil Service is absolutely non-political in character. Its members are not politicians. They must not be members of Parliament. They cannot

actively participate in the political controversies of the day.

Their tenure of office does not depend upon the frailties of parliamentary election. Security of service is assured to them. A change in the Ministry does not affect their position. They continue to hold office as long as they are efficient.

The members of this Civil Service are now mostly recruited by open competition. An examination is annually held for that purpose by an independent and impartial commission. Appointments are given in strict accordance with the results. It is interesting to note that aspirants for Indian Civil Service have to pass this very test.

Some of the best brains in the country are attracted by the prospects of the Civil Service. Highly intellectual university students offer themselves for examination and usually get entrance into it. The old system of nomination and patronage has now completely disappeared.

The service has two main branches. The Upper Division Clerkship has better scales of pay and better prospects. It may lead ultimately to the Permanent Under-Secretaryship which is the highest office open to a Civil Servant.

The Second Division Clerkship is strictly clerical. Its grades are lesser and prospects limited.

Members of the Civil Service are attached to the different departments of State. Each Cabinet Minister has an army of permanent officers and subordinates working under him. They form what in India would be called the Secretariat.

The Permanent Under-Secretary of State is a person who has risen to his post after years of

THE LEGISLATURE

1. The Three Estates of the Realm. 2. The House of Lords. 3. The House of Commons.

1. The Three Estates of the Realm

In the English constitution the legislature is designated 'Parliament'. Its powers are absolute and unlimited. There is no law which it cannot make or unmake. Even constitutional changes can be brought about by its vote. There is no subject on which it cannot legislate and no person whom it cannot touch. Parliament's omnipotence is unquestioned.

Parliament consists of two chambers, the House of Lords and the House of Commons. This is called the bicameral[1] system. It is an historical growth of peculiar significance and interest.

European society, in medieval times, was divided into three 'estates' or classes. The Lords Spiritual were high religious dignitaries. The Lords Temporal constituted the secular aristocracy. The Commons included the lower gentry, the middle classes and generally the poorer citizens of the realm.

These three 'estates' were represented in the National Assembly. Usually each formed its own separate chamber. The States-General in France is an instance in point. However, certain causes combined to make the English Parliament a two-chambered body.

[1] Meaning, 'with two chambers'. Compare 'bicycle' meaning 'with two wheels'.

subordinate service in his department. He embodies a mass of experience and detailed knowledge. He becomes a profound expert in his subject because probably a whole lifetime has been spent over it. Even the Minister looks to him as an authority of inestimable value.

Thus there is a unique combination.

The Minister is ignorant of departmental details. But he is also free from narrow bureaucratic prejudices. His mind has not become immobile by constant service. He is bound to possess a certain freshness of outlook. His views are likely to be more comprehensive and judicious.

The Civil Service may lack in wider understanding. Its vision may be short. But it embodies the best kind of administrative experience. Its profound knowledge of realities proves to be one of the greatest assets in the art of governance.

Thus the Minister and the Civil Servant, when harnessed together, contribute both the requirements of the State. In the one, thought and policy are emphasized; the other specializes in intelligent execution and action. That is the secret of the success of British administration.

The English clergy was averse to taking its place in the General Assembly of the nation. It chose to remain aloof and keep its distinctive position. It voted moneys to the King in the exclusively clerical assemblies known as conventions.

Clergymen as a separate body therefore dropped out of Parliament. There remained scope for the development of only two chambers, one of the aristocracy and the other of the commonalty.

The English aristocracy had also some special features. The eldest son of a peer was the only person in the family who had claim to the father's title and estate. All the other members were mere commoners. The family as such did not enjoy the status of nobility. Even the heir to the title was, during his father's lifetime, without special privileges.

The aristocracy did not therefore degenerate into an exclusive caste. There was a free mixing of the different classes of society. Political fusion between the upper and lower sections of the community was greatly facilitated.

The Knights of the Shire might have been expected to join the aristocratic group. It was natural that they should have been drawn towards the barons. Socially, there were ties of kinship between them. The two together could have formed one house or chamber of the National Assembly.

This did not, however, happen. Barons and knights did not assimilate. The knights chose rather to take their seats in Parliament along with the burgesses or citizens. Why and exactly when they decided to hold away from the barons we do not know. But they preferred to sit as members of the lower and not the upper chamber.

Thus in the structure of the legislature, social distinctions were not faithfully and exactly reproduced. In fact the House of Commons began to develop a peculiar type of solidarity. In it were concentrated the virtues of both the knight and the burgess. One represented the stable, the other represented the dynamic element in society.

The House of Lords contained individuals who formed the richest class. Most of them were big owners of land.

2. The House of Lords

Constitution. The House of Lords is the upper chamber of the English legislature. It is a hereditary body and contains all the peers of the realm.

The prerogative of creating peers is vested in the Sovereign. He can raise any person to the rank of nobility. The eldest son of a peer succeeds to the title after his father's death and is also admitted to a seat in the House of Lords.

There is no limit to the number of peers which the Sovereign can create. And therefore there is no limit to the number of members of the House of Lords.

Originally it contained about 150 members. But the figure has varied from time to time. New creations have been continuously made by successive Sovereigns. About 300 were added in the reign of Queen Victoria alone. The present figure stands at about 720.

There are a few members of the House of Lords who have no hereditary titles. They sit only for life or as long as they hold a particular office. The Law Lords and the Bishops come in this category.

Apart from them, all peers as such, created by the King, must hold a hereditary title.

There can be no fixed tenure for the House of Lords. It is not an elected House and there is no dissolution followed by fresh election. Membership of it is handed down from father to son, and is held for life.

The House of Lords is presided over by the Lord Chancellor. He is an important dignitary and wields vast judicial powers.

Powers and functions. In the earlier stages of its career this House had co-ordinate and equal powers with the House of Commons.

All laws required the assent of the Lords. Administration was subject to their criticism and scrutiny. Even money Bills could not be finally legalized unless they received the approval of the upper chamber.

Till the nineteenth century this body wielded enormous influence in the State. A large number of members of the House of Commons was nominated by a few noblemen. The House of Lords practically supplied all the Ministers. It was the aristocracy who ruled the country. Their prestige and wealth gave them immense importance.

After the Reform Acts of the nineteenth century the situation changed. The House of Commons acquired a really representative character. It began to reflect national thought and national sentiment. There opened the new era of democracy. New ideals and methods of government were enunciated.

But the House of Lords continues to be hereditary even today. And it is associated with another House which is popularly elected and which stands for the

masses. Their companionship is not likely to prove always harmonious. Their angles of vision may differ radically. Their convictions and views may be diametrically opposed to each other.

Yet, as long as their powers are equal and co-ordinate, neither the one nor the other is bound to yield. Both may hold fast to their opinions. In that case there arises a deadlock. The proposal in dispute has to be dropped. No Bill can become law unless it has received the assent of both the Houses.

The Lords may represent their own order. The Commons represent the whole nation. If the privileged few, consisting of the nobility, become hostile, the desires and ambitions of the elected chamber are frustrated. This is considered to be very undesirable and unfair. It may impede political and social progress.

The King's prerogative of creating as many new peers as he is pleased to create has been unquestioned. If conflicts between the Lords and the Commons become very acute, this power may be used. New Lords may be created who hold the same views as the House of Commons. Their number could be so large that the old majority would be turned into a minority. Such a threat was given at the time of the Reform Bill of 1832. It had the necessary effect.

However, this method is felt to be too indirect and clumsy. The House of Commons wanted to assert its inherent superiority to the House of Lords. Special legislation was undertaken for that purpose. **The Parliament Act of 1911** deprived the House of Lords of its effective veto.

This Act dealt with both ordinary and money Bills.

In the case of money Bills it is now laid down that the assent of the House of Lords is not essential. After they have been passed by the House of Commons, such Bills are presented to the House of Lords. If within a month the approval of that body is not given, the Bills are presented to His Majesty for his assent. After that assent is formally notified the Bills become Acts, notwithstanding the opposition of the House of Lords.

For Bills other than money Bills, another procedure is laid down. If such a Bill is passed by the House of Commons in three successive sessions and rejected by the Lords on all the three occasions it can be presented to His Majesty for his assent. As soon as that is given the Bill becomes an Act, notwithstanding the contrary opinion of the upper chamber.

But there is one condition to be fulfilled. A period of two years must elapse between the date of the second reading of the Bill in the first session and the date of its final passing in the third session.

It will thus be seen that the House of Lords has lost its former importance. Its concurrence in legislation is no longer essential. Its effective control over finance has greatly diminished. The real power that is now left to it is the power of delay. It cannot prevent the House of Commons from carrying through its own Bill.

However, the House of Lords is a chamber of great antiquity. It has great historical traditions. It is suggested that its constitution requires to be reformed in accordance with modern conditions. It could be made a real second chamber, with power to restrain, to correct and to revise the actions of the *demos*.

3. THE HOUSE OF COMMONS

The House of Commons is considered to be the lower chamber of the English legislature. In actual practice, however, it is the most important body in the State.

It is the centre of all governmental activity. From it springs all social and political action. It has been always elective in character. It is meant to reflect the opinions and sentiments of the nation.

Till 1832 the method of election to this House was very unsatisfactory and chaotic. It had become entirely out of date. Times were fast changing but no alterations were made in the electoral machinery so as to suit them.

The great defect therefore was that the House of Commons had ceased to be really representative. More than half of its members were nominated and controlled by a handful of wealthy landlords. Villages which had no living residents enjoyed the privilege of sending members. On the other hand the new and populous cities were completely ignored. The franchise was archaic and extremely inadequate.

The Reform Acts of 1832, 1867, 1884, and the Acts of 1918 and 1927 altered the whole position.

Constitution. At present practically all citizens, men and women, above the age of twenty-one, have been given the right of voting. Possession of property is no longer a necessary qualification. Sex is no longer a hindrance. Only criminals, lunatics and bankrupts are excluded from the franchise. Otherwise the stage of adult suffrage has been reached in all but in name.

The total number of members of the House of

Commons is now 640. They are distributed over England, Scotland, and Northern Ireland. One seat is assigned to every 70,000 of the population.

A new House meets after each general election. In the first meeting it proceeds to elect its Speaker or President. The Speaker presides over meetings, maintains order in the House, guards the privileges of members and gives rulings on disputed points of order. He is above party.

The term of the House of Commons has been fixed at five years by the Act of 1911. But if necessary the House can be dissolved earlier. Fresh elections are held after a dissolution and a new House is formed.

Members of the House of Commons are given an allowance of £1000 a year. This enables even a poor man to be in Parliament, which is in almost continuous session for the major part of the year.

Powers and functions. The business of the House of Commons can be divided into three categories: legislative, critical or administrative, and financial.

All laws required for the governance of the country must be placed before the House of Commons and must be passed by that body. No law which is not so passed can have legal validity.

The House has unrestricted power to make new laws. It can also amend, alter or abolish any of the old and existing laws.

Control over administration can be exercised in various ways. The House can put questions and supplementary questions to Ministers. It can discuss and divide on resolutions. It can even move votes of censure and express dissatisfaction at the doings of

Ministers and other executive officials.

Finance is under the fullest control of the House of Commons. All taxes must be voted by it. Taxes not voted by that chamber cannot be imposed and collected. Money Bills must originate in the Lower House. If they are passed by it, they can become Acts with Royal assent even if the House of Lords does not agree with them.

Not only are revenues collected under the authority of the House of Commons. They must be spent also according as it directs. The main details of national expenditure are prescribed by the House. Grants are voted by it for each item and each department. They must not be exceeded or altered without its sanction.

A special independent officer is appointed to audit the accounts. It is his duty to see that the nation's money is properly spent and that the wishes of Parliament are completely carried out.

Political responsibility of the Executive. As stated before, government in England has developed the principle of political responsibility. The House of Commons is the popular chamber of the English legislature. It plays a very important part in the working of the system. It is described as the pivot on which the principle of responsibility moves.

The essence of the system is that the executive is completely subordinate to and controlled by the legislature.

The executive in Britain is known as the Cabinet. It is the Council of Ministers. At its head stands the Prime Minister. It is laid down that all Ministers must be members of one of the Houses of Parliament.

But mere membership of the legislature is not enough. The Cabinet must have the confidence of

the majority of the House of Commons. It is indispensable that the actions and policies of Ministers should be consistently supported by the majority. As soon as that confidence is lost, Ministers must resign office.

The salaries of Ministers are voted by the lower chamber. Money required for different departments must be sanctioned by the Commons. How that money should be spent is determined by them. The sources of taxation must receive their approval. It is for them to decide whether laws should be passed and what they should be.

Nothing can be done by Ministers which would be opposed to the views of the House of Commons. The general policy of the Cabinet must evoke sympathetic and friendly feelings among the members of that chamber. If the Cabinet and the Commons do not agree, the Cabinet must promptly resign. The will of the legislature must be supreme. It will not tolerate an executive which is hostile to its own opinions and ambitions.

The House of Commons itself can justly claim to speak for the nation. The whole of it is elected. The right of voting at its election is practically extended to all citizens. For the time being, it must be taken to reflect the thoughts and sentiments of the larger portion of the electorate.

The existence of organized parties helps to crystallize political differences. Each party has its principles and programme. It elects its leader. Each party tries to secure the majority of votes in a general election. Vigorous propaganda is continuously carried on.

After the results of an election are known, the

King sends for the leader of that party which has captured the majority of seats in the House of Commons. He is made the Prime Minister and is asked to select his colleagues in the Cabinet. They are chosen from the front ranks of the party. Thus the House of Commons give its own leaders to the King to serve as Ministers of State.

It is this absolute control over the executive which is the secret of the enormous power and prestige associated with the House of Commons. It embodies the will of the nation and is the sovereign body of the realm.

IV

LOCAL GOVERNMENT

The scope of Government's activities has enormously increased in modern times. Its functions have now become extraordinary numerous and difficult.

There are some subjects which require uniform control and national attention. They are taken over for administration by the central authority. Almost all the Cabinet departments come under this category.

There are several other matters in which diversity of action may be both necessary and desirable. They can best be left to the management of people living in particular areas. Drainage, waterworks, roads and streets, electricity, etc., are utilities of the highest public benefit. But it is more convenient to entrust them to an authority on the spot.

There are two kinds of local authorities. One functions for cities and is called urban. The other functions for areas other than cities, and is called rural.

England and Wales are divided into 62 Administrative Counties. There are also 83 County Boroughs. These consist of cities with a population of 50,000 and more.

Each County has a Council which is elected by the rate-payers. The total number of members of a **County Council** varies according to the size of the County. Councillors are elected for three years. They co-opt a prescribed number of Aldermen whose term of office extends to six years.

For the transaction of business the County Council appoints a number of Committees of its members.

There are thus Committees for finance, roads and bridges, sanitation, charities, and so on.

A joint Committee consisting of the magistrates and members of the County Council is formed to control the County Police.

Among the functions of the County Council, the following are the more important: higher and elementary education, roads and bridges, diseases of animals, destruction of pests, drainage, sanitation, asylums, small holdings and allotments, and public health.

The administrative counties are sub-divided into County Districts which may be either urban or rural. The former include small towns, the latter include parishes.

The County Districts have their **District Councils.** They administer Public Health and Highways Acts and the Housing Acts. In towns they have to supervise the wards, provide burial grounds, paths, libraries, open spaces, museums, etc., and manage trading services like gas, electricity, trams and waterworks.

In every civil parish there is a **Parish Meeting.** Practically every resident can attend it and give his vote. Parishes which contain more than 300 souls have **Parish Councils.** They exercise certain powers as regards housing, water-supply, sewerage, etc.

Towns which are County Boroughs are outside the jurisdiction of the County Councils. In non-county Boroughs the County Council exercises certain powers.

Each **Borough** has a **Council** which is elected by practically all the rate-payers. Its term of office is three years. The Councillors co-opt a certain number of aldermen. They also elect a mayor who holds

that position for a year.

The Town Council is invested with all the powers which are exercised by an Urban District Council. It has to look after roads, provide burial grounds, construct libraries and museums, manage elementary education, take care of public health and sanitation, supply water, undertake schemes for gas, electricity, trams, etc.

The City Corporations, like the County Councils, have adopted the system of working by Committees. There are thus separate Committees for finance, baths and parks, markets and fairs, public works, health, free libraries, housing, gas, electricity, industrial schools, lunatic asylums, etc.

V

THE JUDICIARY

The judiciary is an important branch of the administration. It is the bulwark of popular liberties. If the law is violated, the authority of a judicial tribunal can be invoked. The judges are empowered to decide whether an offence has been committed. If guilt is established they can inflict penalties.

There are two kinds of judicial cases. When private property and rights are in dispute among citizens it is a **civil** matter. If life or property are attacked it becomes an offence against the State. That is a **criminal** affair.

There are separate laws for civil and criminal trials. Two distinct types of courts are set up to dispose of them.

Petty **criminal** offences are dealt with by **magistrates** who are appointed by the Lord Chancellor. The Chairmen of County and District Councils are magistrates in virtue of their position. So are mayors in boroughs. In the larger boroughs stipendiary magistrates are also appointed. Trial by jury is not provided in trivial cases.

The graver offences are sent for trial to the **High Court.** This Court sits in London and also holds sessions in different parts of the country. Seven circuits are formed for that purpose. One or two judges are assigned to each. They try criminal and even civil suits.

Above the High Court there is the **Court of Criminal Appeal.** To this Court may be preferred appeals on questions of law or, with the judges'

permission, on questions of fact or mixed law and fact.

In civil cases the most popular court is the **County Court.** For the purpose of these Courts England is divided into about 500 districts. These are grouped into circuits, to preside over each of which the Lord Chancellor appoints a judge. The number of such judges is nearly 50. Generally they sit without juries and try cases where comparatively small amounts of money, usually not exceeding £100, are involved.

An appeal from the County Court goes to the High Court.

The **High Court** has three divisions: (1) The King's Bench Division, presided over by the Lord Chief Justice; (2) The Chancery Division, presided over by the Lord Chancellor; (3) The Probate, Divorce and Admiralty Division under a President and another judge. The kind of cases which have to be assigned to each division has been fixed by law.

In Divisions (1) and (3), if any of the parties in the case so desire, questions of fact may be referred to a jury. In Division (2) the permission of the judge is required for the formation of a jury.

The High Court exercises original jurisdiction in important cases. It also hears appeals from the County Courts.

Appeals from the decisions of the High Court go to the **Court of Appeal.** This consists of the Presidents of the three divisions of the High Court and six judges who are permanent.

The highest court of appeal in the Kingdom is the **House of Lords.** It hears final appeals in cases

which are sent on to it from courts in Great Britain and Northern Ireland.

It acts as a court of first instance when peers are charged with treason or felony. In trials by impeachment the House of Commons is the complainant and the House of Lords is the judge.

When the House of Lords sits as a judicial tribunal ordinary lay peers do not take any part in the proceedings. Special life-peers, known as Lords of Appeal in Ordinary, are created to transact judicial business. They are persons who have specialized in law and have had vast experience of judicial work.

The Chancellor, the ex-Chancellors and other peers who have held high judicial offices are entitled to attend the judicial sessions of the House of Lords.

Thus the anomaly of a legislative chamber being also the highest court of law does not exist in reality. It is only apparent. Only lawyers of great standing and high legal dignitaries exercise the functions of the highest tribunal of the realm.

Appeals from overseas Dominions of the Empire do not go to the House of Lords. They are heard by the **Privy Council.** The whole Council does not sit as a judicial court. A certain number of its members are constituted into a special committee known as the Judicial Committee. They are men of high legal attainments. Some of them have also Indian or colonial experience.

Usually the four Law Lords who sit as the judicial tribunal of the House of Lords are also nominated to the Judicial Committee of the Privy Council. The personnel of the highest Court of Appeal for Great Britain and Northern Ireland and for the Dominions overseas is to a great extent the same.